# **EXHIBIT C**

# IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

CHARLOTTE LOQUASTO, MICHAEL	§	
IUBELT, SHELBY IUBELT,	§	
INDIVIDUALLY, ON BEHALF OF THE	§	
ESTATE OF PFC TYLER IUBELT, AND	§	
AS NEXT FRIEND OF V.I., MINOR,	§	
JULIANNE PERRY, INDIVIDUALLY, ON	§	
BEHALF OF THE ESTATE OF STAFF	§	
SGT. JOHN PERRY, DECEASED, AND AS	§	CIVIL ACTION NO
NEXT FRIEND OF L.P. AND G.P.,	§	
MINORS, KATHLEEN PERRY, STEWART	§	
PERRY, MARISSA BROWN,	§	
INDIVIDUALLY AND ON BEHALF OF	§	
THE ESTATE OF SGT. FIRST CLASS	§	
ALLAN E. BROWN, DECEASED, GAIL	§	
PROVOST, INDIVIDUALLY, AND ON	§	
BEHALF OF THE ESTATE OF PETER	§	
PROVOST, DECEASED, MEGHAN	§	
HOLLINGSWORTH, SARAH PETERSON,	§	
BRIAN PROVOST, SPENCER PROVOST,	§	
LOUIS PROVOST, GERTRUDE	§	
PROVOST, KATRINA REEVES,	§	
INDIVIDUALLY AND ON BEHALF OF	§	
THE ESTATE OF COL. JARROLD	§	
REEVES (RET.), DECEASED, AND AS	§	
NEXT FRIEND OF J.R., A MINOR,	§	
SUMMER DUNN, HANNAH MASON,	§	
MALLORY REEVES, CHARLOTTE	§	
REEVES, CHRIS COLOVITA, SAMUEL	§	
GABARA, LAKEIA STOKES, MAGGIE	§	JURY
BILYEU, INDIA SELLERS, ADDIE FORD,	§	
ROBERT HEALY, and HAYLEE	§	
RODRIGUEZ,	§	
	§	
VS.	§	
	§	
FLUOR CORPORATION, INC., FLUOR	\$ \$ \$	
ENTERPRISES, INC., FLUOR	§	
GOVERNMENT GROUP, INC., FLUOR	§	
INTERCONTINENTAL, INC., and	§ §	
ALLIANCE PROJECT SERVICES, INC.	§	

# DEFENDANTS FLUOR CORPORATION, INC., FLUOR ENTERPRISES, INC., FLUOR GOVERNMENT GROUP INTERNATIONAL, INC., AND FLUOR INTERCONTINENTAL, INC.'S STATE COURT FILINGS INDEX

#### TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Flour Corporation, Inc., Flour Enterprises, Inc., Flour Government Group International, Inc., and Flour Intercontinental, Inc. file this state court filings index and would respectfully show the Court as follows:

The following items were filed in the matter styled *Charlotte Loquasto, et al. v. Flouor Corporation, et al.*, Cause No. DC19-06872, in the 14<sup>th</sup> District Court for Dallas County, Texas:

	Date Filed	<u>Document</u>
1.	05/14/19	Plaintiffs' Original Petition
2.	05/14/19	Request for Service
3.	05/14/19	Citation – Flour Corporation, Inc.
4.	05/14/19	Citation – Flour Enterprises, Inc.
5.	05/14/19	Citation – Flour Intercontinental Inc.
6.	05/14/19	Citation – Flour Government Group, Inc.
7.	05/14/19	Citation – Alliance Project Services, Inc.
8.	06/10/19	Flour Government Group International, Inc.'s Original Answer
9.	06/10/19	Defendant Alliance Project Services, Inc.'s Verified Special Appearance
10.	06/17/19	Return of Service – Flour Government Group, Inc.
11.	06/17/19	Return of Service – Alliance Project Services, Inc.
12.	06/17/19	Fluor Government Group International, Inc.'s First Amended Answer
13.	06/17/19	Fluor Corporation, Inc., Fluor Enterprises, Inc., and Fluor Intercontinental, Inc.'s Original Answer

14.	06/18/19	Fluor Government Group International, Inc., Fluor Corporation, Inc., Fluor	
		Enterprises, Inc., and Fluor Intercontinental, Inc.'s Supplement to their	
		Original and First Amended Answers	

Respectfully submitted,

#### HARTLINE BARGER LLP

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ENTERPRISES, INC., FLOUR
GOVERNMENT GROUP INTERNATIONAL,
INC., AND FLOUR INTERCONTINENTAL,
INC.

# **CERTIFICATE OF SERVICE**

The undersigned certifies that on June 19, 2019, Defendants served a true and correct copy of the foregoing State Court Filing Index on all known counsel of record via the Northern District of Texas' CM/ECF filing system and/or Certified Mail Return Receipt Requested.

/s/ Darrell L. Barger
Darrell L. Barger

# Case 3:19-cv-01455-B Document 1-3 Filed 06/19/19 Page 6 of 198 PageID 35

NO. \_\_\_\_\_ Christi Underwood

JURY TRIAL DEMANDED

CHARLOTTE LOQUASTO,	§	IN THE DISTRICT COURT
MICHAEL IUBELT, SHELBY IUBELT,		
INDIVIDUALLY, ON BEHALF OF THE	<b>§</b> <b>§</b>	
ESTATE OF PFC TYLER IUBELT, AND	§	
AS NEXT FRIEND OF V.I., MINOR,	§	
JULIANNE PERRY, INDIVIDUALLY, ON	§	
BEHALF OF THE ESTATE OF	§	
STAFF SGT. JOHN PERRY, DECEASED,	§	
AND AS NEXT FRIEND OF	§	
L.P. AND G.P., MINORS, KATHLEEN PERRY,	§	
STEWART PERRY,		
MARISSA BROWN, INDIVIDUALLY AND	§ § §	
ON BEHALF OF THE ESTATE OF	§	
SGT. FIRST CLASS ALLAN E. BROWN,	§	
DECEASED, GAIL PROVOST,		
INDIVIDUALLY AND ON BEHALF OF	<b>§</b> §	
THE ESTATE OF PETER PROVOST,	§	
DECEASED, MEGHAN HOLLINGSWORTH,	8	
SARAH PETERSON,	§ §	
BRIAN PROVOST, SPENCER PROVOST,	§	
LOUIS PROVOST, GERTRUDE PROVOST,		
KATRINA REEVES, INDIVIDUALLY AND	§ § §	
ON BEHALF OF THE ESTATE OF	§	
COL. JARROLD REEVES (RET.),	§	
DECEASED, AND AS NEXT FRIEND OF	§	
J.R., A MINOR, SUMMER DUNN,	§	
HANNAH MASON, MALLORY REEVES,	§	
CHARLOTTE REEVES, CHRIS COLOVITA,	§	
SAMUEL GABARA, LAKEIA STOKES,	§	
MAGGIE BILYEU, INDIA SELLERS,	§	
ADDIE FORD, ROBERT HEALY and	§	
HAYLEE RODRIGUEZ	§	
	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
FLUOR CORPORATION, INC.,	so so so so so so	A-14
FLUOR ENTERPRISES, INC.,	§	JUDICIAL DISTRICT
FLUOR GOVERNMENT GROUP, INC.,		
FLUOR INTERCONTINENTAL, INC. and	§	

ALLIANCE PROJECT SERVICES, INC.

# **PLAINTIFFS' ORIGINAL PETITION**

Plaintiffs Charlotte Loquasto, Michael Iubelt, Shelby Iubelt, individually, on behalf of the estate of PFC Tyler Iubelt, and as next friend of V.I., a minor, Julianne Perry, individually, on behalf of the estate of Staff Sgt. John Perry, deceased, and as next friend of L.P. and G.P., minors, Kathleen Perry, Stewart Perry, Marissa Brown, individually and on behalf of the estate of Sgt. First Class Allan E. Brown, deceased, Gail Provost, individually and on behalf of the estate of Peter Provost, Meghan Hollingsworth, Sarah Peterson, Brian Provost, Spencer Provost, Louis Provost, Gertrude Provost, Katrina Reeves, individually and on behalf of the estate of Col. Jarrold Reeves (Ret.), deceased, and as next friend of J.R., a minor, Summer Dunn, Hannah Mason, Mallory Reeves, Charlotte Reeves, Chris Colovita, Samuel Gabara, Lakeia Stokes, Maggie Bilyeu, India Sellers, Addie Ford, Robert Healy and Haylee Rodriguez file this Original Petition against Defendants Fluor Corporation, Inc., Fluor Enterprises, Inc., Fluor Intercontinental, Inc., Fluor Government Group, Inc. ("Fluor Defendants"), and Alliance Project Services, Inc. ("APS"), and, for cause of action, would respectfully show this Honorable Court the following:

#### **OVERVIEW OF LAWSUIT**

On Veterans Day 2016, a man detonated a bomb at the Bagram Air Base in Afghanistan. Five men were killed and 17 soldiers were badly injured. The bomber was employed and managed by the Defendants. The Defendants failed to supervise or manage him. They allowed him access to tools and material that he used to build the bomb. They failed to escort him on the base, as required.

As a result, he made a bomb and he was allowed to detonate it. The family members of the dead and the survivors of the bombing seek accountability of the Defendants for their negligence in causing this horrible tragedy.

On Saturday morning of November 12, 2016, more than 200 personnel residing at the Bagram Air Field (the "Base") in Afghanistan were gathering for a Veterans Day 5k race set to begin at 6:15 a.m. The meeting point for the race was an area called the "Disney Clamshell." Also on the Base was man named Ahmad Nayeb. Nayeb was an employee of Defendant APS and was primarily supervised and managed by the Fluor Defendants.

Nayeb worked at Fluor's HAZMAT work center within Fluor's Non-Tactical Vehicle Yard at the Base. Nayeb was not supposed to be on the Base on the morning of November 12, 2016. Defendants were required to ensure that employees like Nayeb were physically escorted off the Base at the end of their work shifts. Nayeb was supposed to have been escorted off the Base by bus at 4:45 a.m. that morning. However, on the morning in question, Nayeb was not escorted off the Base at the end of his work shift.

Prior to November 12, 2016, Nayeb had constructed an explosive vest bomb at Fluor's facility on the Base—a facility Fluor had a duty to supervise and manage. Nayeb used materials owned by Fluor and tools owned by Fluor to construct the explosive vest bomb at Fluor's work location on Base.

On November 12, 2016, instead of being escorted off the Base by bus, Nayeb walked, totally unsupervised by the Defendants, toward the assembly point for the Veterans Day 5k race.

That morning, a group of soldiers had gathered at the Clamshell, intending to conduct a combatives training class. Upon arrival, they saw that the 5k run would be taking place, as the

organizers were preparing for the event. The soldiers decided to hold their training at another facility, so left the Clamshell and began walking alongside Disney Drive towards the alternate location. Meanwhile, Fluor employees Jarrold Reeves and Peter Provost, both avid runners, left their quarters and headed towards the Clamshell for the 5k run. They also traveled alongside Disney Drive towards the Clamshell. It was still early in the morning, and it was dark.

By all accounts, the bomber intended to travel to the Clamshell and detonate his bomb among the hundreds of people who would be gathering there later that morning for the race. The bomber attempted to hide between several concrete bunkers along the walkway. soldiers and Reeves/Provost were approaching the bomber from different directions and, unbeknownst to them, were converging on the bomber. At some point, the bomber realized that he would be caught and would not reach his intended target. Reeves and Provost were closest to the bomber when he jumped up, faced them, and detonated his bomb. Reeves and Provost sustained a direct hit and likely died immediately. The soldiers, also within 15 feet of the bomber, took shrapnel directly from the bomb and also from shrapnel ricocheting off of the concrete bunkers. PFC Tyler Iubelt sustained extensive wounds and burns from the bombing. Witnesses report that he survived the bombing but was close to death. EMTs who arrived on the scene described difficulty performing CPR on him because of the extent of burns to his body. Staff Sgt. John Perry was struck with shrapnel in his eye, which continued to his brain. He died Staff Sgt. Allan Brown sustained extensive shrapnel wounds and burns. on the scene. Witnesses tell of him directing EMTs to take care of other soldiers and constantly encouraging his fellow soldiers, as he held his intestines in his body with his hands. Sgt. Brown received care at Bagram, then Germany, then at Walter Reed Hospital. After several weeks, he finally succumbed to his injuries. Other soldiers sustained severe and life-altering injuries.

This incident has caused the loss of fathers, sons, and spouses. This incident has dramatically altered the lives of several men and women who devoted their lives to military service.

This incident was completely the result of Defendants' negligence and gross negligence. This lawsuit seeks to hold those responsible those who allowed this incident, Fluor and APS, and to give them an opportunity to take responsibility for their grievous mistakes. Any attempt by Defendants to place any blame on the U.S. Army or any other U.S. governmental entity for this tragedy would be shameful.

# II. <u>DISCOVERY CONTROL PLAN</u>

Plaintiffs request a Level 3 discovery control plan pursuant to the Texas Rules of Civil Procedure.

# III. RULE 47 STATEMENT

Pursuant to Tex. R. Civ. P. 47, Plaintiffs state that each seeks more than \$1 million in monetary relief.

#### IV. PARTIES

# **PLAINITIFFS**

#### A. Family of PFC Tyler Iubelt

**Plaintiff Charlotte Loquasto**, surviving mother of PFC Tyler Iubelt, is an individual and resident of the State of Illinois.

**Plaintiff Michael Iubelt**, surviving father of PFC Tyler Iubelt, is an individual and resident of the State of Indiana.

**Plaintiff Shelby Iubelt,** surviving spouse of PFC Tyler Iubelt, is an individual and resident of the State of Illinois. She brings claims individually, on behalf of the estate of Tyler Iubelt, and as next friend of V.I., her child with Tyler Iubelt.



About Tyler Iubelt: At the time of his death, Tyler was 20 years old. He was born and raised in Illinois. He joined the United States Army on October 21, 2015, as a motor transport operator. Tyler and Shelby were married on October 30, 2015. In April 2016, he was assigned to Fort Hood. He was a member of the 1st Cavalry Division Sustainment Brigade. Shelby gave birth to Violet on May 7, 2016, at Fort Hood. In August 2016, Tyler received deployment orders and he deployed to Afghanistan on September 7, 2016. In October 2016, Tyler was promoted to Private First Class.

By all accounts, at the time of the incident, Tyler was at the front of the group of soldiers walking down Disney Drive. They were approximately 15 feet from the bomber at time of detonation. Witness reports indicate that Tyler initially survived the blast. He was attended to by medics on the scene, but they had difficulty administering CPR because of the extensive burns to his body. Tyler was pronounced dead at the scene. Tyler's body was returned to the U.S. at Dover Air Force Base on November 15, 2016. Tyler was buried at Sunset Memorial Park at Du Quoin, Illinois, on November 23, 2016. In 2017, the State of Illinois renamed a section of Illinois Route 51 the PFC Tyler Iubelt Memorial Highway.

# B. Family of Staff Sgt. John Perry

**Plaintiff Julianne Perry,** surviving spouse Staff Sgt. John Perry, deceased, is an individual and resident of Bell County, Texas. She brings claims individually, on behalf of the estate of John Perry and as next friend of her children with John Perry, L.P. and G.P., minors.

**Plaintiff Kathleen Perry**, surviving mother of John Perry, is an individual and resident of the State of New Jersey.

**Plaintiff Stewart Perry**, surviving father of John Perry, is an individual and resident of the State of California.



About John Perry: At the time of his death, John had just turned 30. He was born in California and was raised in New Jersey and California. John entered the U.S. Army in January 2008. He and Julianne married shortly thereafter. He served in Korea from February 2009 to February 2010, and from June 2013 to June 2014. He was deployed to Afghanistan from August 2010 to July 2011, before deploying again in September 2016. John was also a member of the 1st Cavalry Division Sustainment Brigade in Afghanistan. John was likely killed instantly from shrapnel that entered his head, right below his eye. John was buried at Arlington National Cemetery.

# C. Family of SFC Allan E. Brown

**Plaintiff Marissa Brown** is an individual and resident of the State of California. She brings claims individually and on behalf of the estate of Allan E. Brown.



About Allan E. Brown: Allan was 46 years old when he died. Allan was raised in Maryland and entered the Army on September 16, 1988, as a petroleum supply specialist. He transferred into the United States Army Reserves in June of 1990. In December of 2000, Allan reclassified to a mobile subscriber equipment network switching systems operator. On Nov. 20, 2007, he reenlisted into the active component as an information technology specialist. He was deployed in Operation Iraqi Freedom three times: from August 2006 to August 2007, November 2008 to October 2009, and December 2010 to December 2011. Allan was deployed in support of Operation Enduring Freedom from July 2014 to September 2014, and in Operation Freedom's Sentinel from September to December 2016. Allan was also a member of the 1st Cavalry Division Sustainment Brigade in Afghanistan. Allan and Marissa married in Hawaii on July 1, 2000.

After the bombing, Allan was treated at Bagram and then was transferred to Germany, and ultimately to Walter Reed hospital. Allan was conscious but in severe pain for three weeks after the incident. He was not able to speak, but was able to squeeze family members' hands and communicate by blinking his eyes. Despite the efforts of his doctors, Allan's condition worsened and he fell into a coma and died on December 6, 2016. Allan was buried at Arlington National Cemetery. The Secretary of the Army was present when Allan died, and was present at his funeral.

#### D. Family of Peter Provost

**Plaintiff Gail Provost**, surviving spouse of Peter Provost, is an individual and resident of the State of South Carolina. She brings claims individually and on behalf of the estate of Peter Provost.

**Plaintiff Meghan Hollingsworth**, surviving daughter of Peter Provost, is an individual and resident of the State of South Carolina.

**Plaintiff Sarah Peterson**, surviving daughter of Peter Provost, is an individual and resident of the State of South Carolina.

**Plaintiff Brian Provost**, surviving son of Peter Provost, is an individual and resident of the State of South Carolina.

**Plaintiff Spencer Provost**, surviving son of Peter Provost, is an individual and resident of the State of California.

**Plaintiff Louis Provost**, surviving father of Peter Provost is an individual and resident of the State of Massachusetts.

**Plaintiff Gertrude Provost**, the surviving mother of Peter Provost, is an individual and resident of the State of Massachusetts.



About Peter Provost: Peter was 62 years old at time of death. He grew up in Massachusetts and received a BS in environmental health from UMass-Amherst in 1979. During his studies, he also served as a research assistant at Harvard University's Graduate School of Public Health. After Amherst, he went to work in the environmental health and safety field. This included a five year stint with OSHA and as corporate manager for health and safety at a semiconductor company. He spent the largest part of his professional career (15 years) at Pirelli North America, where he rose to Corporate Director, Environmental Health & Safety, and served as a member of the Board of Directors. He received numerous certifications in his field and authored several articles on subjects related to safety. Peter went to work for Fluor in 2011. Peter and Gail were married in 1990 and had two sons, Brian and Spencer. Peter also had two daughters, Meghan and Sarah, from a prior marriage.

# **E.** Family of Jarrold Reeves

**Plaintiff Katrina Reeves**, surviving spouse of Col. Jarrold Reeves (Ret.), is an individual and resident of the State of Kentucky. She brings claims individually, on behalf of the estate of Jarrold Reeves and as next friend of J.R., a minor, her daughter with Jarrold Reeves.

**Plaintiff Summer Dunn**, surviving daughter of Jarrold Reeves, is an individual and resident of the State of Georgia.

**Plaintiff Hannah Mason**, surviving daughter of Jarrold Reeves, is an individual and resident of the State of Georgia.

**Plaintiff Mallory Reeves**, surviving daughter of Jarrold Reeves, is an individual and resident of the State of Georgia.

**Plaintiff Charlotte Reeves**, surviving mother of Jarrold Reeves, is an individual and resident of the State of Florida.



About Jarrold Reeves: Jarrold was 57 years old at time of death. He was raised in Avondale Estates, Georgia. In high school, he played football and won a state championship in 1976. He attended college at Presbyterian College in South Carolina, where he played football and participated in the ROTC. He graduated in 1982. In 1982, he was commissioned as a second lieutenant in the U.S. Army and embarked upon a 29-year career of distinguished military service primarily in the Logistics Corps. He is the recipient of the following distinguished military medals: 2016: Secretary of Defense Medal for the Defense of Freedom (posthumously); 2011: Legion of Merit; 2008: Bronze Star; 2008: Iraqi Campaign Medal; 2007: Legion of Merit Medal; 2003: Defense Meritorious Service Medal; 2003: Joint Service Commendation Medal, 2003: Army Service Commendation Medal; 2003: Joint Service Achievement Service Medal; 2003: Global War on Terrorism Medal; 2001 National Defense Service Medal; 1998: Humanitarian Service Medal; 1992: Armed Forces Reserve Medal.

He held numerous senior leadership positions in the U.S. Army. In 2008, his unit was deployed to Iraq to oversee the sustainment and distribution of logistics support and to lead the initial planning and execution for the drawdown of military forces and associated equipment. In 2010, his unit was deployed to Haiti to lead the initial planning for humanitarian assistance and disaster relief support to over a million Haitians affected by the earthquake. In addition to his degree from Presbyterian College, Jarrold attended the U.S. Army Command and General Staff College and was awarded a master's degree in Military Arts and Science. He also received a Masters of Strategic Leadership degree from the Army War College. Jarrold retired from the Army in May 2011, at Fort Knox.

Jarrold was married previously and had three daughters. In May 2000, Jarrold married Katrina in Louisville. They moved together to Fort Hood. Their daughter Jennifer was born at Fort Hood in 2001. Jarrold began working for Fluor in July 2011, shortly after his retirement from the Army. His initial contract was for two years. In 2013, the country manager asked him to stay and he agreed to do so. At the time of his death, Jarrold was Fluor's deputy project manager for logistics and public works in Afghanistan. Jarrold was laid to rest on November 30, 2016, at Kentucky Veterans Cemetery-Central in Radcliff, Kentucky.

#### F. Survivors

**Plaintiff Chris Colovita** is an individual and resident of the State of Alabama.

Colonel Chris Colovita was born and raised in Falls Church, Virginia. He is married and the father of three children. He graduated from Marshall University in 1994 and was commissioned as a Second Lieutenant in the United States Army in 1994. He has a long and commendable record with the U.S. Army, which includes multiple deployments to Iraq and Afghanistan. In 2016, he was assigned to Fort Hood, and served as Commander of the First

Cavalry Sustainment Brigade. He deployed to Afghanistan in September 2016.

On the day of the incident, he recalls walking down Disney Drive, with Chief Gabara to his left and Sgt. Perry to his right. He recalls a large explosion and a huge orange flash. He woke up on the ground and drew his pistol and yelled for everyone to stay down. As he surveyed the scene, he thought that everyone else was dead. He recalls seeing the bodies of Peter Provost and Jerry Reeves. He recalls seeing Sgt. Perry slumped over, and clearly deceased. As medics arrived, he assisted loading the victims into medivacs. He then went to the hospital to treat his injuries. Colonel Colovita sustained shrapnel wounds to his right knee. He has been diagnosed with a moderate to severe TBI. He sustained injuries to his neck, causing nerve damage, and pain and numbness to his extremities, for which he has received physical therapy and injections. He is a candidate for cervical surgery. He suffered a hyperextended right elbow. He has been diagnosed with PTSD. He returned from Afghanistan in June 2017, and was assigned to Redstone AMC, where he is currently stationed. He is currently in the process of medically retiring from the Army, for injuries associated with the November 2016 explosion.

**Plaintiff Samuel Gabara** is an individual and resident of the State of Texas.

Sam Gabara is 37 years old. He was born and raised in Rogers City, Michigan. He is married and is the father of two children. He enlisted in the U.S. Army on August 16, 2000, at age 18. He was assigned to Fort Hood, then Fort Campbell, then Fort Knox, and finally to Fort Hood. Over the course of his career, he was deployed overseas six times – serving four tours in Iraq and two tours in Afghanistan

On the day of the bombing, Chief Gabara recalls walking with his fellow soldiers. After the explosion, he recalls coming to, and lying face down on the ground. He got up and directed his fellow soldiers to stay down. He then attended to the wounded. Chief Gabara was treated at the Bagram ER, then taken to Landstuhl, Germany, then to Walter Reed and finally to Darnell Medical Center. He sustained shrapnel wounds to his left wrist, which severed his ECU tendon and injured his ulna bone. He sustained multiple smaller shrapnel wounds to his neck, chest, and thighs. He also suffered a traumatic brain injury. He was cleared for redeployment on January 10, 2017, and returned to Afghanistan from January 20, 2017 until June 2017. He then returned to Fort Hood. Chief Gabara medically retired from the U.S. Army on October 30, 2018. Currently, he suffers from post-traumatic arthritis in his left wrist, chronic migraines, chronic back and neck pain, PTSD, insomnia and issues surrounding the TBI. He currently receives weekly counseling, botox injections for migraines, and pain management for his back injury. He is scheduled to undergo nerve repair surgery for his left wrist. He still has pieces of shrapnel in his body.

#### **Plaintiff Lakeia Stokes** is an individual and resident of the State of Texas.

Lakeia Stokes is 37 years old. Lakeia attended college at Clemson, where she played basketball, and where she still holds records in five categories. She graduated with a degree in sports management and played briefly in Greece and Switzerland. She enlisted in the Army in January 2014. She was assigned to Fort Hood. Her initial deployment was to Kuwait, from October 2014 to June 2015, and then she returned to Fort Hood. She deployed to Afghanistan in September 2016.

On the day of the incident, she recalls walking down the road with her fellow soldiers. After the explosion, the first thing she recalls was Chief Gabara yelling for everyone to get down on the ground. She recalls Addie Peters in pain because of her hip and leg. She tried to go to Peters but realized that her arm had severe damage and was almost severed. She recalls Col. Colovita attending to her and urging her to hang on. She recalls riding in an ambulance with

India Sellers and Allan Brown, and Brown holding his intestines in his body. But, still, he was encouraging both of them the entire time.

After the incident, she underwent surgery at Bagram to her arm, to place an external fixator. She was later transferred to Walter Reed and then to San Antonio, where she has had the majority of her surgeries. Lakeia was medically retired from Army in March 2018. She still undergoes therapy to her left arm, and has permanent nerve damage – she will never regain full use of her arm. Her left eye has not recovered from retinal detachment. She has permanent nerve damage to her left knee. She suffered a broken right foot. She still has shrapnel all over her body. She has a skin graft on her leg. She has undergone over 15 surgeries and has been advised that she has several more to go.

Plaintiff Maggie Bilyeu is an individual and resident of the State of Texas.

Maggie Bilyeu is 28 years old and grew up in Southern Illinois. She enlisted in the U.S. Army in October 2015. In June 2016, she was assigned to Fort Hood. She deployed to Afghanistan in September 2016.

On the date of incident, she recalls walking alongside Lakeia Stokes, India Sellers, and Addie Peters. She recalls seeing the bomber for the first time, just as he detonated. She recalls awaking from the explosion and trying to drag herself to safety. At some point, she realized that her intestines were exposed. She also noted that her leg had received extensive damage. She waited in place until she was attended to by medics and taken from the scene by ambulance. She was initially treated and stabilized at Bagram, then taken to Germany and ultimately to Walter Reed Hospital. She awoke from a coma while at Walter Reed. She was later transferred to a facility in Minnesota to focus on repair of her leg. She was relocated to Fort Hood in January

2017, where she stayed for most of the year. In December 2017, she was assigned to Fort Sam Houston where she is part of a Warrior Transition Unit.

Maggie received extensive injuries from shrapnel. She has had over 23 surgeries, to her leg, breast and abdomen. She will undergo several additional scar revision surgeries to her breast, and abdomen. She received a plate to stabilize several broken ribs. Her most significant problems are with her left leg. After years of hoping to save her leg, her doctors ultimately recommended that it be amputated, which it was in 2019. She also suffers from post-concussive syndrome and suffers from memory loss. She must take pain medicine every day, particularly in order to complete physical therapy. She also takes medication for anxiety and to sleep. She also suffers from tinnitus and hearing loss, and requires hearing aids.

**Plaintiff India Sellers** is an individual and resident of the State of Texas.

India Sellers is 27 years old. Both of her parents served in the military. She is a single mother of a six year old son. India enlisted in the Army in July 2010. She deployed to Afghanistan from Fort Hood in September 2016. On the day of the incident, she recalls walking with Lakeia Stokes, Maggie Bilyeu and Addie Peters. She recalls waking up after the detonation, on the ground. Medics immediately attended to her. She recalls being placed in a neck brace, being heavily wrapped in gauze and placed in an ambulance. She recalls being in the ambulance with Stokes and Sgt. Brown, and Sgt. Brown giving words of encouragement to her and Stokes, demanding that the medics focus on them.

She was taken to the Bagram hospital where she was stabilized and then flown to Germany. She next remembers waking up at Walter Reed Hospital. She was at Walter Reed until July 2017, where she received numerous surgeries to treat shrapnel wounds to her head, arm, abdomen, groin, leg, back, and eye. She has undergone 30 surgeries and is awaiting another

surgery to her eye. At this time, she has major damage to her leg, resulting in constant swelling and difficulty walking. She is blind in her left eye. Her left shoulder has metal rods holding it together and has limited range of motion. She suffered a TBI and suffers from recurring headaches.

After leaving Walter Reed, she was assigned to Fort Bragg, where her family is located. She was assigned to a wounded warrior unit and continued to receive extensive therapy. She retired from the Army on June 2, 2018, and resides in Killen, Texas.

**Plaintiff Addie Ford** is an individual and resident of the State of Texas.

Addie Ford is 24 years old and was raised in California. She enlisted in the Army at age 18 and intended to make a career in the Army. She was assigned to Fort Hood in July 2013 and was deployed to Afghanistan in April 2014. She returned in November 2014, to Fort Hood. She deployed again to Afghanistan in September 2016.

On the day of the incident, she recalls walking with her follow soldiers, most closely to Lakeia Stokes and Maggie Bilyeu. After the explosion, she recalls coming to and standing. She looked around and saw all of her colleagues on the ground. She heard yelling from others to get down. As she went towards Stokes, she felt sharp pain in her hip. She remembers medics coming onto the scene and watching them attend to Tyler Iubelt. She recalls that Tyler was conscious but burned badly – so badly that the medics could not perform CPR on him because his skin was so damaged. She recalls the moment when the medics indicated that Tyler was gone.

She began to assess her own injuries and found that, in addition to her hip injuries, her intestines were exposed, and her right pinky finger was severed. She recalls being loaded onto an ambulance and taken to the Bagram hospital. She had lost so much blood that the doctors

determined that they would have do a bone marrow IV. This required them to drill into her bones. At first they tried her shin, then her femur, then finally were successful in her shoulder. She passed out from the pain. She was in and out of consciousness and recalls waking up in Germany. She was told that she had undergone several surgeries in that timeframe. She was later transferred to Walter Reed Hospital.

At Walter Reed, she had multiple surgeries to treat her hip; shrapnel had shattered her iliac wing in her hip and her L3 vertebrae, where the shrapnel had exited her body. She underwent other surgeries to remove several feet of her small intestine, part of her colon, and her appendix. In December 2016, she was transferred to the VA hospital in San Antonio and was discharged in January 2017. She was sent back to Fort Hood, where she attempted to go back to work. Because of her injuries and PTSD, she was not able to work in a standard setting and was transferred to a Warrior Transition Unit. She was discharged from the Army in April 2018, and currently resides in Houston.

She still suffers radiating pain in her leg and pain in her back. She has difficulty standing for long periods of time. She has post-concussive syndrome and associated headaches. She continues to suffer from PTSD.

**Plaintiff Robert Healy** is an individual and resident of the State of Texas.

Robert is 25 years old and is originally from Florida. He enlisted in the U.S. Army in 2014. He deployed to Afghanistan in September 2016. At Bagram, he worked with Sgt. John Perry, in logistical support.

On the date of the incident, Robert recalls walking with his fellow soldiers; he was towards the back of the group. As a result of the explosion, he was knocked unconscious for a few moments. He recalls all of his fellow soldiers on the ground and dirt falling to the ground.

He could not hear and had difficulty seeing. He turned around and walked a few steps and was grabbed and attended to medically. He recalls a tourniquet being placed on his arm and that his arm, at the bicep, was bleeding badly.

He recalls being placed in a car and taken to the hospital. He was stabilized at the hospital at Bagram and then flown to Germany for two days. He was then sent to Walter Reed where he was treated for 30 days. He was then sent to Audie Murphy Memorial VA Hospital, where he was treated for 15 days. He was discharged to Fort Hood, where he continued to receive physical and occupational therapy and counseling. He continued therapy until March 2018, when he was discharged from the Army. He now resides in Austin, Texas.

Robert sustained several shrapnel wounds all over his body. With respect to one arm, at one point in his treatment, his doctors considered amputating his arm but were able to save it. Still, he has permanent nerve damage to his arm and has loss of sensation in his arm and fingers. He has nerve damage to one leg, from his shin to his ankle. He still has shrapnel in one knee, which causes ongoing pain. Shrapnel also tore into his abdomen, damaging his colon and requiring two surgeries. He has been diagnosed with a traumatic brain injury. He suffers from memory loss. He has issues swallowing from repeated intubation and is being treated at the VA in Temple, Texas for this.

**Plaintiff Haylee Rodriguez** is an individual and resident of the State of Texas.

Haylee Rodriguez is 25 years old and was born and raised in the Dallas area. She enlisted in the U.S. Army in 2014. She was part of the 154th Composite Transportation Company, Fort Hood, Texas, and deployed to Afghanistan in September 2016.

On the morning in question, she recalls walking with her fellow soldiers, closest to Chief Gabara. Her first memory after the bombing is hearing the screaming of Maggie Bilyeu, and the smell of burnt flesh. She sustained injuries primarily to her lower legs and left hip and also suffered a traumatic brain injury. She was treated at the Bagram ER, then in Germany and finally in Maryland. She then returned to Fort Hood in January 2017. Currently, she suffers from numbness in her legs and PTSD-associated symptoms. She continues to participate in physical and behavior health therapy.

# **DEFENDANTS**

**Defendant Fluor Corporation, Inc.** is a Delaware corporation with its principal place of business in Irving, Dallas County, Texas. It may be served through its registered agent for service in Texas: Corporation Service Company dba CSC - Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701-3218.

**Defendant Fluor Enterprises, Inc.** is a California corporation with its principal place of business in Irving, Dallas County, Texas. It may be served through its registered agent for service in Texas: Corporation Service Company dba CSC - Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701-3218.

**Defendant Fluor Intercontinental, Inc.** is a California corporation with its principal place of business in Irving, Dallas County, Texas. It may be served through its registered agent for service in Texas: Corporation Service Company dba CSC - Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701-3218.

**Defendant Fluor Government Group, Inc.** is a Delaware corporation, with its principal place of business in either Irving, Dallas County, Texas, or the State of South Carolina. Although this defendant does and continues to do extensive business in the State of Texas, it has not designated a registered agent for service in this state. Therefore, the Texas Secretary of State is deemed its agent for service of this lawsuit. Fluor Government Group,

Inc. may thus be served with Service of Process through the Texas Secretary of State, P.O. Box 12079, Austin, Texas 78711-2079, via certified mail. Plaintiffs request that the Secretary of State forward copies to Fluor Government Group, Inc. via its registered agent in South Carolina: Corporation Service Company, 1703 Laurel Street, Columbia, SC 29201.

Defendants Fluor Corporation, Inc., Fluor Enterprises, Inc., Fluor Intercontinental, Inc. and Fluor Government Group, Inc. are referred to herein as the "Fluor Defendants."

Defendant Alliance Project Services, Inc. is a Delaware corporation, with its principal place of business in the State of Virginia. Although this defendant does and continues to do extensive business in the State of Texas, it has not designated a registered agent for service in this state. Therefore, the Texas Secretary of State is deemed its agent for service of this lawsuit. Alliance Project Services, Inc. may thus be served with Service of Process through the Texas Secretary of State, P.O. Box 12079, Austin, Texas 78711-2079, via certified mail. Plaintiffs request that the Secretary of State forward copies to Alliance Project Services, Inc. via its President, Tod E. Nickles, 19440 Golf Vista Plaza, Suite 360, Leesburg, VA 20176.

In the event any parties are misnamed or are not included herein, it is Plaintiffs' contention that such was a misidentification or misnomer. To the extent any of the defendants are conducting business pursuant to a trade name or assumed name, then suit is brought against such Defendant pursuant to Tex. R. Civ. P. 28 and Plaintiffs demand that, upon answer to the Petition, that Defendants answer in their correct legal and assumed names.

#### V. <u>JURISDICTION AND VENUE</u>

The amount in controversy exceeds the jurisdictional minimum of this Court. Venue is proper in Dallas County, Texas, because one or more of the defendants has its principal place of business in Dallas County, Texas.

# VI. FACTUAL BACKGROUND

Plaintiffs incorporate the above paragraphs as if set forth in full below.

In the early morning hours of November 12, 2016, a man named Ahmad Nayeb detonated a bomb at the Bagram Air Base in Afghanistan. As a result of the incident, three U.S. soldiers were killed (Tyler Iubelt, John Perry and Allan E. Brown), two contractors were killed (Jarrold Reeves and Peter Provost), sixteen U.S. soldiers were injured and one Polish solider was injured. The incident was a result of the negligence and gross negligence of the Defendants. Nayeb was employed by Defendant APS and was generally managed and supervised by the Fluor Defendants.

As part of various agreements with the U.S. government, the Fluor Defendants agreed to provide certain services at the Base. APS was a subcontractor of the Fluor Defendants. In order to perform their work, Fluor and APS retained many employees who worked onsite at the Base, including Nayeb. At this point, it is clear that the Defendants negligently managed and supervised Nayeb. As a result, he was able to construct a bomb, using equipment and material provided by the Defendants. He was also able to roam the Base unsupervised, despite Fluor's contractual agreement to monitor and escort him on the Base, and to ensure he left the Base when his work shift ended.

The incident has absolutely zero to do with the U.S. Government's provision of security on the Base. The U.S. Army did not have complete, direct, or actual control over the supervision of Nayeb – Defendants did. The U.S. Army did not direct Defendants in any way with respect to their negligent retention, management, and supervision of Nayeb.

Any attempt by Defendants to blame the U.S. Army or any other U.S. governmental entity for this tragedy would be shameful. This incident was completely the result of Defendants' negligence and gross negligence.

In the months leading up to the incident, Nayeb worked at Fluor's "HAZMAT" work center. For much of the time, he was unsupervised by the Defendants. At times, he had wandered away from his worksite, and was unaccounted for. He had been caught doing personal work during work hours. He had been caught sleeping on the job.

Despite this, Defendants did not fire Nayeb, but instead retained him. It does not appear that he was ever reprimanded for his poor work performance. As a result of Defendants' negligence, Nayeb was allowed to keep his job, remain on the Base and was permitted to continue his efforts to build, and ultimately detonate, a bomb. The U.S. Army had no involvement in the hiring, managing, supervising or retaining Nayeb.

Defendants also allowed Nayeb to check out certain tools and equipment, including tools and equipment that were not remotely necessary for his job. The evidence will show that Nayeb checked out a "multimeter" at least nine times in the three months before the incident. A multimeter is a tool used to measure electrical voltage, current, and resistance. Nayeb had no need to use a multimeter for his actual job. Instead, he used this multimeter to build a bomb. Nayeb used other material from the Fluor worksite to construct the bomb. Defendants negligently provided Nayeb with access to tools and materials used to construct the bomb. The U.S. Army had no involvement in the decision to allow Nayeb access to these tools and materials.

Defendants were also responsible for transporting their employees on the Base. Workers like Nayeb were required to be taken from the Base entry point directly to their work area, and

then back to the entry point at the end of their shift. However, Defendants failed to do this, with respect to Nayeb. Defendants' negligence and gross negligence allowed Nayeb to travel alone towards the Disney Clamshell with a bomb on November 11, 2016, and to ultimately detonate the bomb. The U.S. Army had no involvement in the failure to properly escort Nayeb.

Defendant's acts and omissions allowed Nayeb to construct and detonate a bomb which killed five people and grievously injured seventeen more.

# V. <u>CAUSES OF ACTION AGAINST FLUOR DEFENDANTS</u>

#### NEGLIGENCE/GROSS NEGLIGENCE

Plaintiffs incorporate the above paragraphs as if set forth in full below.

The Fluor Defendants owed the Decedents and the Survivors a duty of ordinary care. On the lead up to the explosion, the Fluor Defendants, by and through their officers, employees, agents and representatives, committed acts of omission and commission, which collectively and severally constituted negligence and gross negligence. The Fluor Defendants' imprudent acts and omissions included, but were not limited to:

- 1. failing to use ordinary care in employing, supervising, managing and/or retaining Nayeb;
- 2. failing to properly escort Nayeb to and from his work station and the exit point of the Base:
- 3. failing to control access of its equipment and material;
- 4. negligently permitting Nayeb access to tool and equipment; and
- 5. such other acts of negligence and gross negligence as will be shown at trial.

Said acts of negligence and gross negligence were the proximate cause of the injuries and damages sustained by the Plaintiffs.

Further, the Fluor Defendants actions were knowing, reckless, and/or malicious and, when viewed objectively from the Fluor Defendants' standpoint, involve an extreme degree of

risk considering the probability and magnitude of potential harm to others. The Fluor Defendants had subjective awareness of the risk involved, but nevertheless proceeded in conscious indifference to the rights, safety and/or welfare of others. Therefore, Plaintiffs seek punitive damages against the Fluor Defendants

# VI. DAMAGES AGAINST THE FLUOR DEFENDANTS

Plaintiffs incorporate the previous allegations.

#### A. Family of PFC Tyler Iubelt

Shelby Iubelt is the surviving spouse of PFC Tyler Iubelt. She asserts claims individually and on behalf of the estate of Tyler Iubelt, and as next friend of V.I., her child with Tyler Iubelt. Charlotte Loquasto is the surviving mother of Tyler Iubelt. Michael Iubelt is the surviving father of Tyler Iubelt.

On behalf of the Estate of Tyler Iubelt, Plaintiffs assert a survival cause of action against the Fluor Defendants. Plaintiffs are either an heir at law or representative of the Estate of Tyler Iubelt and assert such claim for all damages that the Estate may be justly entitled because of the wrongful conduct of the Fluor Defendants, including but not limited to damages for conscious pain and suffering, torment, disfigurement, and mental anguish.

Plaintiffs also assert a wrongful death cause of action against the Fluor Defendants. Plaintiffs are the spouse, parents, and child of Tyler Iubelt. Plaintiffs seek any and all wrongful death damages to which they may be entitled, including but not limited to grief, bereavement, torment, mental anguish, and pecuniary loss, past and future.

#### B. Family of Staff Sgt. John Perry

Julianne Perry is the surviving spouse of Staff Sgt. John Perry, deceased. She brings claims individually, on behalf of the estate of John Perry and as next friend of her children with

John Perry, L.P. and G.P., minors. Kathleen Perry is the surviving mother of John Perry. Stewart Perry is the surviving father of John Perry.

On behalf of the Estate of John Perry, Plaintiffs assert a survival cause of action against the Fluor Defendants. Plaintiffs are either an heir at law or representative of the Estate of John Perry, and assert such claim for all damages that the Estate may be justly entitled because of the wrongful conduct of the Fluor Defendants, including but not limited to damages for conscious pain and suffering, torment, disfigurement, and mental anguish.

Plaintiffs also assert a wrongful death cause of action against the Fluor Defendants. Plaintiffs are the spouse, parents and children of John Perry. Plaintiffs seek any and all wrongful death damages to which they may be entitled, including but not limited to grief, bereavement, torment, mental anguish, and pecuniary loss, past and future.

# C. Family of SFC Allan E. Brown

Marissa Brown, is the surviving spouse of Sgt. First Class Allan E. Brown, deceased. She brings claims individually and on behalf of the estate of Allan E. Brown.

On behalf of the Estate of Allan E. Brown, Plaintiff asserts a survival cause of action against the Fluor Defendants. Plaintiff is the either an heir at law or representative of the Estate of Allan E. Brown, and asserts such claim for all damages that the Estate may be justly entitled because of the wrongful conduct of the Fluor Defendants, including but not limited to damages for conscious pain and suffering, torment, disfigurement, and mental anguish.

Plaintiff also asserts a wrongful death cause of action against the Fluor Defendants. Plaintiff is the spouse of Allan E. Brown. Plaintiff seeks any and all wrongful death damages to which she may be entitled, including but not limited to grief, bereavement, torment, mental anguish, and pecuniary loss, past and future.

# **D.** Family of Peter Provost

Gail Provost is the surviving spouse of Peter Provost, deceased. Meghan Hollingsworth is the surviving daughter of Peter Provost. Sarah Peterson is the surviving daughter of Peter Provost. Brian Provost is the surviving son of Peter Provost. Spencer Provost is the surviving son of Peter Provost.

These Plaintiffs are each the heirs at body of the Decedent Peter Provost. Thus, and pursuant to Section 408.001(b) of the Texas Labor Code, and in accordance with Texas law, these Plaintiffs (in their individual capacity) seek exemplary damages against the Fluor Defendants for their gross negligence in bringing about, causing or contributing to the death of Peter Provost, with exemplary damages being assessed against the Fluor Defendants, in accordance with the relevant factors established under Texas law and as determined by a jury.

# E. <u>Family of Jarrold Reeves</u>

Katrina Reeves is the surviving spouse of Col. Jarrold Reeves (Ret), deceased. She brings claims individually and as next friend of J.R., minor daughter of Jarrold Reeves. Summer Dunn is the surviving daughter of Jarrold Reeves. Hannah Mason is the surviving daughter of Jarrold Reeves. Mallory Reeves is the surviving daughter of Jarrold Reeves.

Plaintiffs are each the heirs at body of the Decedent Jarrold Reeves. Thus, and pursuant to Section 408.001(b) of the Texas Labor Code, and in accordance with Texas law, these Plaintiffs (in their individual capacity) seek exemplary damages against the Fluor Defendants for their gross negligence in bringing about, causing or contributing to the death of Jarrold Reeves, with exemplary damages being assessed against the Fluor Defendants, in accordance with the relevant factors established under Texas law and as determined by a jury.

# F. Survivors

As a direct and proximate result of the Fluor Defendants' acts and omissions described above, **Plaintiff Chris Colovita** has incurred one or more of the following categories of damages: conscious physical and mental pain, and suffering and anguish, past and future; physical impairment, past and future; loss of enjoyment of life and peace of mind, past and future; reasonable and necessary medical, counseling, psychiatric, therapeutic and related expenses, past and future; loss of earnings and earning capacity; and such other damages that will be shown at trial.

As a direct and proximate result of the Fluor Defendants' acts and omissions described above, **Plaintiff Samuel Gabara** has incurred one or more of the following categories of damages: Conscious physical and mental pain, and suffering and anguish, past and future; physical impairment, past and future; loss of enjoyment of life and peace of mind, past and future; reasonable and necessary medical, counseling, psychiatric, therapeutic and related expenses, past and future; loss of earnings and earning capacity; and such other damages that will be shown at trial.

As a direct and proximate result of the Fluor Defendants' acts and omissions described above, **Plaintiff Lakeia Stokes** has incurred one or more of the following categories of damages: Conscious physical and mental pain, and suffering and anguish, past and future; physical impairment, past and future; loss of enjoyment of life and peace of mind, past and future; reasonable and necessary medical, counseling, psychiatric, therapeutic and related expenses, past and future; loss of earnings and earning capacity; and such other damages that will be shown at trial.

As a direct and proximate result of the Fluor Defendants' acts and omissions described above, **Plaintiff Maggie Bilyeu** has incurred one or more of the following categories of damages: Conscious physical and mental pain, and suffering and anguish, past and future; physical impairment, past and future; loss of enjoyment of life and peace of mind, past and future; reasonable and necessary medical, counseling, psychiatric, therapeutic and related expenses, past and future; loss of earnings and earning capacity; and such other damages that will be shown at trial.

As a direct and proximate result of the Fluor Defendants' acts and omissions described above, **Plaintiff India Sellers** has incurred one or more of the following categories of damages: Conscious physical and mental pain, and suffering and anguish, past and future; physical impairment, past and future; loss of enjoyment of life and peace of mind, past and future; reasonable and necessary medical, counseling, psychiatric, therapeutic and related expenses, past and future; loss of earnings and earning capacity; and such other damages that will be shown at trial.

As a direct and proximate result of the Fluor Defendants' acts and omissions described above, **Plaintiff Addie Ford** has incurred one or more of the following categories of damages: Conscious physical and mental pain, and suffering and anguish, past and future; physical impairment, past and future; loss of enjoyment of life and peace of mind, past and future; reasonable and necessary medical, counseling, psychiatric, therapeutic and related expenses, past and future; loss of earnings and earning capacity; and such other damages that will be shown at trial.

As a direct and proximate result of the Fluor Defendants' acts and omissions described above, **Plaintiff Robert Healy** has incurred one or more of the following categories of damages:

Conscious physical and mental pain, and suffering and anguish, past and future; physical impairment, past and future; loss of enjoyment of life and peace of mind, past and future; reasonable and necessary medical, counseling, psychiatric, therapeutic and related expenses, past and future; loss of earnings and earning capacity; and such other damages that will be shown at trial.

As a direct and proximate result of the Fluor Defendants' acts and omissions described above, **Plaintiff Haylee Rodriguez** has incurred one or more of the following categories of damages: Conscious physical and mental pain, and suffering and anguish, past and future; physical impairment, past and future; loss of enjoyment of life and peace of mind, past and future; reasonable and necessary medical, counseling, psychiatric, therapeutic and related expenses, past and future; loss of earnings and earning capacity; and such other damages that will be shown at trial.

Plaintiffs also seek exemplary damages in an amount within the jurisdictional limits of this Court.

# VII. CAUSES OF ACTION AGAINST DEFENDANT APS

# NEGLIGENCE/GROSS NEGLIGENCE

Plaintiffs incorporate the above paragraphs as if set forth in full below.

Defendant APS owed the Decedents and the Survivors a duty of ordinary care. On the lead-up to the explosion, Defendant APS, by and through its officers, employees, agents, and representatives, committed acts of omission and commission, which collectively and severally constituted negligence and gross negligence. Defendant APS' imprudent acts and omissions included, but were not limited to:

1. failing to use ordinary care in employing, supervising, managing and/or retaining Nayeb;

- 2. failing to properly escort Nayeb to and from his work station and the exit point of the Base;
- 3. failing to control access of its equipment and material;
- 4. negligently permitting Naveb access to tool and equipment; and
- 5. such other acts of negligence and gross negligence which will be shown at trial.

Said acts of negligence and gross negligence were the proximate cause of the injuries and damages sustained by the Plaintiffs.

Further, Defendant APS' actions were knowing, reckless, and/or malicious and, when viewed objectively from the Defendant APS' standpoint, involved an extreme degree of risk considering the probability and magnitude of potential harm to others. Defendant APS had subjective awareness of the risk involved, but nevertheless proceeded in conscious indifference to the rights, safety and/or welfare of others. Therefore, Plaintiffs seek punitive damages against Defendant APS.

# VIII. <u>DAMAGES AGAINST APS</u>

Plaintiffs incorporate the previous allegations.

#### A. Family of PFC Tyler Iubelt

Shelby Iubelt is the surviving spouse of PFC Tyler Iubelt. She asserts claims individually and on behalf of the estate of Tyler Iubelt, and as next friend of V.I., her child with Tyler Iubelt. Charlotte Loquasto is the surviving mother of Tyler Iubelt. Michael Iubelt is the surviving father of Tyler Iubelt.

On behalf of the Estate of Tyler Iubelt, Plaintiffs assert a survival cause of action against Defendant APS. Plaintiffs are either an heir at law or representative of the Estate of Tyler Iubelt, and assert such claim for all damages that the Estate may be justly entitled because of the

wrongful conduct of Defendant APS, including but not limited to damages for conscious pain and suffering, torment, disfigurement, and mental anguish.

Plaintiffs also assert a wrongful death cause of action against Defendant APS. Plaintiffs are the spouse, parents and child of Tyler Iubelt. Plaintiffs seek any and all wrongful death damages to which they may be entitled, including but not limited to grief, bereavement, torment, mental anguish, and pecuniary loss, past and future.

### B. Family of Staff Sgt. John Perry

Plaintiff Julianne Perry is the surviving spouse of Staff Sgt. John Perry, deceased. She brings claims individually, on behalf of the estate of John Perry and as next friend of their children with John Perry, L.P. and G.P., minors. Kathleen Perry is the surviving mother of John Perry. Stewart Perry is the surviving father of John Perry.

On behalf of the Estate of John Perry, Plaintiffs assert a survival cause of action against Defendant APS. Plaintiffs are either an heir at law or representative of the Estate of John Perry, and assert such claim for all damages that the Estate may be justly entitled because of the wrongful conduct of Defendant APS, including but not limited to damages for conscious pain and suffering, torment, disfigurement, and mental anguish.

Plaintiffs also assert a wrongful death cause of action against Defendant APS. Plaintiffs are the spouse, parents and children of John Perry. Plaintiffs seek any and all wrongful death damages to which they may be entitled, including but not limited to grief, bereavement, torment, mental anguish, and pecuniary loss, past and future.

### C. <u>Family of SFC Allan E. Brown</u>

Plaintiff Marissa Brown, is the surviving spouse of Sgt. First Class Allan E. Brown, deceased. She brings claims individually and on behalf of the estate of Allan E. Brown.

On behalf of the Estate of Allan E. Brown, Plaintiff asserts a survival cause of action against Defendant APS. Plaintiff is the heir at law or representative of the Estate of Allan E. Brown and asserts such claim for all damages that the Estate may be justly entitled because of the wrongful conduct of Defendant APS, including but not limited to damages for conscious pain and suffering, torment, disfigurement, and mental anguish.

Plaintiff also asserts a wrongful death cause of action against Defendant APS. Plaintiff is the spouse of Allan E. Brown. Plaintiff seeks any and all wrongful death damages to which she may be entitled, including but not limited to grief, bereavement, torment, mental anguish, and pecuniary loss, past and future.

### D. Family of Peter Provost

Plaintiff Gail Provost, is the surviving spouse of Peter Provost, deceased. She brings claims individually and on behalf of the estate of Peter Provost. Meghan Hollingsworth is the surviving daughter of Peter Provost. Sarah Peterson is the surviving daughter of Peter Provost. Brian Provost is the surviving son of Peter Provost. Spencer Provost is the surviving son of Peter Provost. Louis Provost is the surviving father of Peter Provost. Gertrude Provost is the surviving mother of Peter Provost.

On behalf of the Estate of Peter Provost, these Plaintiffs assert a survival cause of action against Defendant APS. Plaintiffs are either an heir at law or representative of the Estate of Peter Provost, and assert such claim for all damages that the Estate may be justly entitled because of the wrongful conduct of Defendant APS, including but not limited to damages for conscious pain and suffering, torment, disfigurement, and mental anguish.

These Plaintiffs also assert a wrongful death cause of action against Defendant APS.

Plaintiffs are the spouse, parents and children of Peter Provost. Plaintiffs seek any and all

wrongful death damages to which they may be entitled, including but not limited to grief, bereavement, torment, mental anguish, and pecuniary loss, past and future.

### E. Family of Jarrold Reeves

Katrina Reeves is the surviving spouse of Col. Jarrold Reeves (Ret), deceased. She brings claims individually, on behalf of the estate of Jarrold Reeves, and as next friend of J.R., a minor, daughter of Jarrold Reeves. Summer Dunn is the surviving daughter of Jarrold Reeves. Plaintiff Hannah Mason is the surviving daughter of Jarrold Reeves. Mallory Reeves is the surviving daughter of Jarrold Reeves. Charlotte Reeves is the surviving mother of Jarrold Reeves.

On behalf of the Estate of Jarrold Reeves, these Plaintiffs assert a survival cause of action against Defendant APS. Plaintiffs are either an heir at law or representative of the Estate of Jarrold Reeves, and assert such claim for all damages that the Estate may be justly entitled because of the wrongful conduct of Defendant APS, including but not limited to damages for conscious pain and suffering, torment, disfigurement, and mental anguish.

These Plaintiffs also assert a wrongful death cause of action against Defendant APS. Plaintiffs are the spouse, parent and children of Jarrold Reeves. Plaintiffs seek any and all wrongful death damages to which they may be entitled, including but not limited to grief, bereavement, torment, mental anguish, and pecuniary loss, past and future.

### F. <u>Survivors</u>

As a direct and proximate result of the Fluor Defendants' acts and omissions described above, **Plaintiff Chris Colovita** has incurred one or more of the following categories of damages: conscious physical and mental pain, and suffering and anguish, past and future; physical impairment, past and future; loss of enjoyment of life and peace of mind, past and future;

reasonable and necessary medical, counseling, psychiatric, therapeutic and related expenses, past and future; loss of earnings and earning capacity; and such other damages that will be shown at trial.

As a direct and proximate result of the Fluor Defendants' acts and omissions described above, **Plaintiff Samuel Gabara** has incurred one or more of the following categories of damages: Conscious physical and mental pain, and suffering and anguish, past and future; physical impairment, past and future; loss of enjoyment of life and peace of mind, past and future; reasonable and necessary medical, counseling, psychiatric, therapeutic and related expenses, past and future; loss of earnings and earning capacity; and such other damages that will be shown at trial.

As a direct and proximate result of the Fluor Defendants' acts and omissions described above, **Plaintiff Lakeia Stokes** has incurred one or more of the following categories of damages: Conscious physical and mental pain, and suffering and anguish, past and future; physical impairment, past and future; loss of enjoyment of life and peace of mind, past and future; reasonable and necessary medical, counseling, psychiatric, therapeutic and related expenses, past and future; loss of earnings and earning capacity; and such other damages that will be shown at trial.

As a direct and proximate result of the Fluor Defendants' acts and omissions described above, **Plaintiff Maggie Bilyeu** has incurred one or more of the following categories of damages: Conscious physical and mental pain, and suffering and anguish, past and future; physical impairment, past and future; loss of enjoyment of life and peace of mind, past and future; reasonable and necessary medical, counseling, psychiatric, therapeutic and related expenses, past

and future; loss of earnings and earning capacity; and such other damages that will be shown at trial.

As a direct and proximate result of the Fluor Defendants' acts and omissions described above, **Plaintiff India Sellers** has incurred one or more of the following categories of damages: Conscious physical and mental pain, and suffering and anguish, past and future; physical impairment, past and future; loss of enjoyment of life and peace of mind, past and future; reasonable and necessary medical, counseling, psychiatric, therapeutic and related expenses, past and future; loss of earnings and earning capacity; and such other damages that will be shown at trial.

As a direct and proximate result of the Fluor Defendants' acts and omissions described above, **Plaintiff Addie Ford** has incurred one or more of the following categories of damages: Conscious physical and mental pain, and suffering and anguish, past and future; physical impairment, past and future; loss of enjoyment of life and peace of mind, past and future; reasonable and necessary medical, counseling, psychiatric, therapeutic and related expenses, past and future; loss of earnings and earning capacity; and such other damages that will be shown at trial.

As a direct and proximate result of the Fluor Defendants' acts and omissions described above, **Plaintiff Robert Healy** has incurred one or more of the following categories of damages: Conscious physical and mental pain, and suffering and anguish, past and future; physical impairment, past and future; loss of enjoyment of life and peace of mind, past and future; reasonable and necessary medical, counseling, psychiatric, therapeutic and related expenses, past and future; loss of earnings and earning capacity; and such other damages that will be shown at trial.

As a direct and proximate result of the Fluor Defendants' acts and omissions described above, **Plaintiff Haylee Rodriguez** has incurred one or more of the following categories of damages: Conscious physical and mental pain, and suffering and anguish, past and future; physical impairment, past and future; loss of enjoyment of life and peace of mind, past and future; reasonable and necessary medical, counseling, psychiatric, therapeutic and related expenses, past and future; loss of earnings and earning capacity; and such other damages that will be shown at trial.

Plaintiffs also seek exemplary damages in an amount within the jurisdictional limits of this Court.

### IX. PRESERVATION OF EVIDENCE

Plaintiffs request and demand that each Defendant preserve and maintain all evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit or the damages resulting therefrom, including statements, photographs, videotapes, audiotapes, surveillance or security tapes, business or medical records, incident reports, bills, telephone call slips or records, correspondence, facsimiles, email, voicemail, text messages, any evidence involving the incident in question, and any electronic image or information related to the referenced incident or damages.

### X. REQUEST FOR DISCLOSURE

Pursuant to Tex. R. Civ. P. 194, Plaintiffs request that each defendant disclose within fifty days of service of this Request, the information and/or material described in Rule 194.2.

### XI. <u>DEMAND FOR JURY TRIAL</u>

Plaintiffs respectfully demand a jury trial and have tendered the appropriate fee.

### **PRAYER**

WHEREFORE, Plaintiffs Charlotte Loquasto, Michael Iubelt, Shelby Iubelt, individually, on behalf of the estate of PFC Tyler Iubelt, and as next friend of V.I., a minor, Julianne Perry, individually, on behalf of the estate of Staff Sgt. John Perry, deceased, and as next friend of L.P. and G.P., minors, Kathleen Perry, Stewart Perry, Marissa Brown, individually and on behalf of the estate of Sgt. First Class Allan E. Brown, deceased, Gail Provost, individually and on behalf of the estate of Peter Provost, deceased, Meghan Hollingsworth, Sarah Peterson, Brian Provost, Spencer Provost, Louis Provost, Gertrude Provost, Katrina Reeves, individually and on behalf of the estate of Col. Jarrold Reeves (Ret.), deceased, and as next friend of J.R., a minor, Summer Dunn, Hannah Mason, Mallory Reeves, Charlotte Reeves, Chris Colovita, Samuel Gabara, Lakeia Stokes, Maggie Bilyeu, India Sellers, Addie Ford, Robert Healy and Haylee Rodriguez file this Original Petition against pray for judgment against Defendants Fluor Corporation, Inc., Fluor Enterprises, Inc., Fluor Intercontinental, Inc., Fluor Government Group, Inc., and Alliance Project Services, Inc. for actual damages for pecuniary losses, mental anguish, loss of companionship and society, loss of inheritance, pain and mental anguish, medical expenses and all such other damages they are justly entitled, plus exemplary damages; plus pre- judgment and post-judgment interest as allowed by law; all costs of court; and all such other and further relief, at law and in equity, to which Plaintiffs may be justly entitled.

### Respectfully submitted,

### THE BUZBEE LAW FIRM

/s/ Anthony G. Buzbee
Anthony G. Buzbee
State Bar No. 24001820
tbuzbee@txattorneys.com
Peter K. Taaffe
State Bar No. 24003029
ptaaffe@txattorneys.com
JP Morgan Chase Tower
600 Travis, Ste. 7300
Houston, Texas 77002
Telephone: (713) 223-5393
Facsimile: (713) 223-5909

David George Texas Bar No. 00793212 BAKER•WOTRING LLP 700 JPMorgan Chase Tower 600 Travis Street Houston, Texas 77002 Telephone: (713) 980-1700 Fax: (713) 980-1701

dgeorge@bakerwotring.com

### **ATTORNEYS FOR PLAINTIFFS**

# Case 3:19-cv-01455-B Document 1-3 Filed 06/19/19 Page 45 of 198 PageID 74

**FILED** DALLAS COUNTY 5/14/2019 9:49 AM FELICIA PITRE DISTRICT CLERK

FOR EACH PARTY SERVED YOU MUST FURNISH ONE (1) COPY OF THE PLEADING FOR WRITS FURNISH TWO (2) COPIES OF THE PLEADING PER PARTY TO BE SERVED
DC-19-06872 CASE NUMBER: CURRENT COURT: DALLAS COUNTY DISTRICT COURT
TYPE OF INSTRUMENT TO BE SERVED (See Reverse For Types): PLAINTIFFS' ORIGINAL PETITION
FILE DATE OF MOTION: 5.14.19    Month/ Day/ Year
SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):  1. NAME: Fluor Corporation, Inc.  ADDRESS: 211 E. 7th Street, Suite 620, Austin, TX 78701-3218  AGENT, (if applicable): Corporation Service Company dba CSC - Lawyers Incorporating Service Company  TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): Citation  SERVICE BY (check one):  ATTORNEY PICK-UP CONSTABLE  CIVIL PROCESS SERVER - Authorized Person to Pick-up: Court Records Research Phone: 713-227-3353  MAIL CERTIFIED MAIL  PUBLICATION:  Type of Publication: COURTHOUSE DOOR, or
□ NEWSPAPER OF YOUR CHOICE: □ OTHER, explain
**********************
***
2. NAME: Fluor Enterprises, Inc.  ADDRESS: 211 E. 7th Street, Suite 620, Austin, TX 78701-3218
AGENT, (if applicable): Corporation Service Company dba CSC - Lawyers Incorporating Service Company,
TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): citation
SERVICE BY (check one):  ATTORNEY PICK-UP  CIVIL PROCESS SERVER - Authorized Person to Pick-up: Court Records Research  MAIL  PUBLICATION:  Type of Publication:  COURTHOUSE DOOR, or  NEWSPAPER OF YOUR CHOICE:  OTHER, explain
ATTORNEY (OR ATTORNEY'S AGENT) REQUESTING SERVICE:
NAME: Peter K. Taaffe TEXAS BAR NO./ID NO. 24003029
MAILING ADDRESS: 600 Travis St. Suite 7300
PHONE NUMBER: 713 223-5393 FAX NUMBER: 713- 223-5909  EMAIL ADDRESS: ptaaffe@txattorneys.com

### Case 3:19-cv-01455-B Document 1-3 Filed 06/19/19 Page 46 of 198 PageID 75

### FOR EACH PARTY SERVED YOU MUST FURNISH ONE (1) COPY OF THE PLEADING FOR WRITS FURNISH TWO (2) COPIES OF THE PLEADING PER PARTY TO BE SERVED **CURRENT COURT: DALLAS COUNTY DISTRICT COURT** CASE NUMBER: TYPE OF INSTRUMENT TO BE SERVED (See Reverse For Types): PLAINTIFFS' ORIGINAL PETITION FILE DATE OF MOTION: 5.14.19 SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served): NAME: Fluor Intercontinental, Inc. ADDRESS: 211 E. 7th Street, Suite 620, Austin, TX 78701-3218 AGENT, (if applicable): Corporation Service Company dba CSC - Lawyers Incorporating Service Company TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): Citation SERVICE BY (check one): ☐ CONSTABLE ATTORNEY PICK-UP CIVIL PROCESS SERVER - Authorized Person to Pick-up: Court Records Research Phone: 713-227-3353 **PUBLICATION:** ☐ COURTHOUSE DOOR, or Type of Publication: ■ NEWSPAPER OF YOUR CHOICE: OTHER, explain \_ NAME: Fluor Government Group, Inc. ADDRESS: AGENT, (if applicable): Texas Secretary of State, P.O. Box 12079, Austin, Texas 78711-2079 TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): Citation SERVICE BY (check one): CONSTABLE ☐ ATTORNEY PICK-UP ✓ CIVIL PROCESS SERVER - Authorized Person to Pick-up: Court records research Phone: 713-227-3353 ☐ MAIL ☐ CERTIFIED MAIL ☐ PUBLICATION: ☐ COURTHOUSE DOOR, or Type of Publication: ■ NEWSPAPER OF YOUR CHOICE: \_\_\_\_\_ OTHER, explain ATTORNEY (OR ATTORNEY'S AGENT) REQUESTING SERVICE: \_\_\_\_\_ TEXAS BAR NO./ID NO. 24003029 NAME: Peter K. Taaffe MAILING ADDRESS: 600 Travis St. Suite 7300

phone number

FAX NUMBER: 713-

area code

223-5909

fax number

PHONE NUMBER: 713

area code

EMAIL ADDRESS: ptaaffe@txattorneys.com

### Case 3:19-cv-01455-B Document 1-3 Filed 06/19/19 Page 47 of 198 PageID 76

### FOR EACH PARTY SERVED YOU MUST FURNISH ONE (1) COPY OF THE PLEADING FOR WRITS FURNISH TWO (2) COPIES OF THE PLEADING PER PARTY TO BE SERVED

CASE NUMBER: CURRE	NT COURT: DALLAS COUNTY DISTRICT COURT
TYPE OF INSTRUMENT TO BE SERVED (See Reverse For Types):	LAINTIFFS' ORIGINAL PETITION
FILE DATE OF MOTION: 5.14.19	th/ Day/ Year
SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appe	ars In The Pleading To Be Served):
5. NAME: Alliance Project Services, Inc.	
ADDRESS:	
AGENT, (if applicable): Texas Secretary of State, P.O. Box	12079, Austin, Texas 78711-2079
TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type	e): Citation
✓ CIVIL PROCESS SERVER - Authorized Person to Pick-u  MAIL	or CHOICE:
OTHER, explain	
**************************************	
<b>6.</b> NAME:	
ADDRESS:	
AGENT, (if applicable):	
TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type)	e):
SERVICE BY (check one):  ATTORNEY PICK-UP  CO.	NSTABLE
☐ CIVIL PROCESS SERVER - Authorized Person to Pick-	up: Phone:
	RTIFIED MAIL
☐ PUBLICATION:  Type of Publication: ☐ COURTHOUSE DOOR, OR NEWSPAPER OF YOUR	CHOICE:
ATTORNEY (OR ATTORNEY'S AGENT) REQUESTING SERVICE:  NAME: Peter K. Taaffe	XAS BAR NO./ID NO. 24003029
MAILING ADDRESS: 600 Travis St. Suite 7300	
PHONE NUMBER: 713 223-5393	FAX NUMBER: 713- 223-5909
area code phone number  EMAIL ADDRESS: ptaaffe@txattorneys.com	area code fax number

# FORM NO. 353-3 - CITATION THE STATE OF TEXAS

To: FLUOR CORPORATION, INC.

BY SERVING ITS REGISTERED AGENT CORPORATION SERVICE COMPANY DBA CSC-LAWYERS INCORPORATING SERVICE COMPANY

211 E 7TH ST STE 620 AUSTIN TX 78701-3218

#### GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the **14th District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

### Said Plaintiff being

CHARLOTTE LOQUASTO, MICHAEL IUBELT, SHELBY IUBELT, INDIVIDUALLY, ON BEHALF OF THE ESTATE OF PFC TYLER IUBELT, AND AS NEXT FRIEND OF V.I., MINOR, JULIANNE PERRY, INDIVIDUALLY, ON BEHALF OF THE ESTATE OF STAFF SGT. JOHN PERRY, DECEASED, AND AS NEXT FRIEND OF L.P. AND G.P., MINORS, KATHLEEN PERRY, STEWART PERRY, MARISSA BROWN, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF SGT. FIRST CLASS ALLAN E. BROWN, DECEASED, GAIL PROVOST, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF PETER PROVOST, DECEASED, MEGHAN HOLLINGSWORTH, SARAH PETERSON, BRIAN PROVOST, SPENCER PROVOST, LOUIS PROVOST, GERTRUDE PROVOST, KATRINA REEVES, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF COL. JARROLD REEVES (RET.), DECEASED, AND AS NEXT FRIEND OF J.R., A MINOR, SUMMER DUNN, HANNAH MASON, MALLORY REEVES, CHARLOTTE REEVES, CHRIS COLOVITA, SAMUEL GABARA, LAKEIA STOKES, MAGGIE BILYEU, INDIA SELLERS, ADDIE FORD, ROBERT HEALY and HAYLEE RODRIGUEZ

Filed in said Court 14th day of May, 2019 against

FLUOR CORPORATION, INC., FLUOR ENTERPRISES, INC., FLUOR GOVERNMENT GROUP, INC., FLUOR INTERCONTINENTAL, INC. ALLIANCE PROJECT SERVICES, INC

For Suit, said suit being numbered <u>DC-19-06872</u>, the nature of which demand is as follows: Suit on **OTHER PERSONAL INJURY** etc. as shown on said petition **REQUEST FOR DISCLOSURE**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.

Given under my hand and the Seal of said Court at office this 16th day of May, 2019.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas





### **ESERVE**

### **CITATION**

DC-19-06872

CHARLOTTE LOQUASTO, et al vs.
FLUOR CORPORATION, INC., et al

ISSUED THIS **16th day of May, 2019** 

FELICIA PITRE Clerk District Courts, Dallas County, Texas

By: GAY LANE, Deputy

Attorney for Plaintiff
ANTHONY G BUZBEE
JP MORGAN CHASE TOWER
600 TRAVIS STE 7300
HOUSTON TX 77002
713-223-5393

DALLAS COUNTY SERVICE FEES NOT PAID

### **OFFICER'S RETURN**

Case No.: DC-19-06872						
Court No.14th District Co	ourt					
Style: CHARLOTTE LO	QUASTO, et al					
vs.						
FLUOR CORPORATION	N, INC., et al					
Came to hand on the	day of	, 20	, ato'clo	ockM. Executed at		,
within the County of		at o'clock _	M. on the	day of		,
20, by	delivering to the within name	d				
each, in person, a true cop	by of this Citation together wi	th the accompanying copy	of this pleading, having	first endorsed on same date of	delivery. The distance actual	ally traveled by
me in serving such proces	s wasmiles and m	ny fees are as follows: To	certify which witness my	y hand.		
	For serving Citation	\$				
	For mileage	\$	of	County,		
	For Notary	\$	Ву		Deputy	
		(Must be verified if	served outside the State	of Texas.)		
Signed and sworn to by th	e said	before me this	day of	, 20,		
to certify which witness n	ny hand and seal of office.					
					<del> </del>	
			Notary Public	County		

# FORM NO. 353-3 - CITATION THE STATE OF TEXAS

To: FLUOR ENTERPRISES, INC

BY SERVING ITS REGISTERED AGENT CORPORATION SERVICE COMPANY DBA CSC-LAWYERS INCORPORATING SERVICE COMPANY

211 E 7TH ST STE 620 AUSTIN TX 78701-3218

### GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the **14th District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

### Said Plaintiff being

CHARLOTTE LOQUASTO, MICHAEL IUBELT, SHELBY IUBELT, INDIVIDUALLY, ON BEHALF OF THE ESTATE OF PFC TYLER IUBELT, AND AS NEXT FRIEND OF V.I., MINOR, JULIANNE PERRY, INDIVIDUALLY, ON BEHALF OF THE ESTATE OF STAFF SGT. JOHN PERRY, DECEASED, AND AS NEXT FRIEND OF L.P. AND G.P., MINORS, KATHLEEN PERRY, STEWART PERRY, MARISSA BROWN, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF SGT. FIRST CLASS ALLAN E. BROWN, DECEASED, GAIL PROVOST, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF PETER PROVOST, DECEASED, MEGHAN HOLLINGSWORTH, SARAH PETERSON, BRIAN PROVOST, SPENCER PROVOST, LOUIS PROVOST, GERTRUDE PROVOST, KATRINA REEVES, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF COL. JARROLD REEVES (RET.), DECEASED, AND AS NEXT FRIEND OF J.R., A MINOR, SUMMER DUNN, HANNAH MASON, MALLORY REEVES, CHARLOTTE REEVES, CHRIS COLOVITA, SAMUEL GABARA, LAKEIA STOKES, MAGGIE BILYEU, INDIA SELLERS, ADDIE FORD, ROBERT HEALY and HAYLEE RODRIGUEZ

Filed in said Court 14th day of May, 2019 against

FLUOR CORPORATION, INC., FLUOR ENTERPRISES, INC.,FLUOR GOVERNMENT GROUP, INC., FLUOR INTERCONTINENTAL, INC. ALLIANCE PROJECT SERVICES, INC

For Suit, said suit being numbered <u>DC-19-06872</u>, the nature of which demand is as follows: Suit on **OTHER PERSONAL INJURY** etc. as shown on said petition **REQUEST FOR DISCLOSURE**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas. Given under my hand and the Seal of said Court at office this 16th day of May, 2019.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas





### **ESERVE**

### **CITATION**

DC-19-06872

CHARLOTTE LOQUASTO, et al vs.
FLUOR CORPORATION, INC., et al

ISSUED THIS **16th day of May, 2019** 

FELICIA PITRE Clerk District Courts, Dallas County, Texas

By: GAY LANE, Deputy

Attorney for Plaintiff
ANTHONY G BUZBEE
JP MORGAN CHASE TOWER
600 TRAVIS STE 7300
HOUSTON TX 77002
713-223-5393

DALLAS COUNTY SERVICE FEES NOT PAID

### **OFFICER'S RETURN**

Case No.: DC-19-06872						
Court No.14th District Co	urt					
Style: CHARLOTTE LO	QUASTO, et al					
VS.						
FLUOR CORPORATION	I, INC., et al					
Came to hand on the	day of	, 20	, ato'clo	ockM. Executed at	i	,
within the County of	a	ito'clock	M. on the	day of		,
20, by	delivering to the within name	d				
			· · · · · · · · · · · · · · · · · · ·			
each, in person, a true cop	y of this Citation together wit	th the accompanying copy of	of this pleading, having	first endorsed on same date of	f delivery. The distance ac	tually traveled by
me in serving such proces	s wasmiles and m	y fees are as follows: To o	certify which witness my	y hand.		
	For serving Citation	\$				
	For mileage	\$	of	County,		
	For Notary	\$	By		Deputy	
		(Must be verified if	served outside the State	of Texas.)		
Signed and sworn to by the	e said	before me this	day of	, 20,		
to certify which witness n	ny hand and seal of office.					
			Notary Public	County		

# FORM NO. 353-3 - CITATION THE STATE OF TEXAS

To: FLUOR INTERCONTINENTAL INC

BY SERVING ITS REGISTERED AGENT CORPORATION SERVICE COMPANY

DBA CSC-LAWYERS INCORPORATING SERVICE COMPANY

211 E 7TH ST STE 620 AUSTIN TX 78701-3218

### GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the **14th District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

### Said Plaintiff being

CHARLOTTE LOQUASTO, MICHAEL IUBELT, SHELBY IUBELT, INDIVIDUALLY, ON BEHALF OF THE ESTATE OF PFC TYLER IUBELT, AND AS NEXT FRIEND OF V.I., MINOR, JULIANNE PERRY, INDIVIDUALLY, ON BEHALF OF THE ESTATE OF STAFF SGT. JOHN PERRY, DECEASED, AND AS NEXT FRIEND OF L.P. AND G.P., MINORS, KATHLEEN PERRY, STEWART PERRY, MARISSA BROWN, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF SGT. FIRST CLASS ALLAN E. BROWN, DECEASED, GAIL PROVOST, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF PETER PROVOST, DECEASED, MEGHAN HOLLINGSWORTH, SARAH PETERSON, BRIAN PROVOST, SPENCER PROVOST, LOUIS PROVOST, GERTRUDE PROVOST, KATRINA REEVES, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF COL. JARROLD REEVES (RET.), DECEASED, AND AS NEXT FRIEND OF J.R., A MINOR, SUMMER DUNN, HANNAH MASON, MALLORY REEVES, CHARLOTTE REEVES, CHRIS COLOVITA, SAMUEL GABARA, LAKEIA STOKES, MAGGIE BILYEU, INDIA SELLERS, ADDIE FORD, ROBERT HEALY and HAYLEE RODRIGUEZ

Filed in said Court 14th day of May, 2019 against

FLUOR CORPORATION, INC., FLUOR ENTERPRISES, INC., FLUOR GOVERNMENT GROUP, INC., FLUOR INTERCONTINENTAL, INC. ALLIANCE PROJECT SERVICES, INC

For Suit, said suit being numbered <u>DC-19-06872</u>, the nature of which demand is as follows: Suit on **OTHER PERSONAL INJURY** etc. as shown on said petition **REQUEST FOR DISCLOSURE**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.

Given under my hand and the Seal of said Court at office this 16th day of May, 2019.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas





### **ESERVE**

### **CITATION**

DC-19-06872

CHARLOTTE LOQUASTO, et al vs.
FLUOR CORPORATION, INC., et al

ISSUED THIS **16th day of May, 2019** 

FELICIA PITRE Clerk District Courts, Dallas County, Texas

By: GAY LANE, Deputy

Attorney for Plaintiff
ANTHONY G BUZBEE
JP MORGAN CHASE TOWER
600 TRAVIS STE 7300
HOUSTON TX 77002
713-223-5393

DALLAS COUNTY SERVICE FEES NOT PAID

### **OFFICER'S RETURN**

Case No.: DC-19-06872						
Court No.14th District Co	ourt					
Style: CHARLOTTE LO	QUASTO, et al					
VS.						
FLUOR CORPORATION	N, INC., et al					
Came to hand on the	day of	, 20	, ato'clo	ckM. Executed at	·	
within the County of	a	at o'clock	M. on the	day of		,
20, by	delivering to the within name	d				
each, in person, a true cop	y of this Citation together wit	th the accompanying copy	of this pleading, having f	first endorsed on same date of	delivery. The distance act	tually traveled by
me in serving such proces	s wasmiles and m	y fees are as follows: To	certify which witness my	hand.		
	For serving Citation	\$				
	For mileage	\$	of	County,		
	For Notary	\$	By		Deputy	
		(Must be verified if	served outside the State	of Texas.)		
Signed and sworn to by the	e said	before me this	day of	, 20,		
to certify which witness n	ny hand and seal of office.					
			Notary Public	County		

FORM NO. 3534 CITATION THE STATE OF TEXAS

To: FLUOR GOVERNMENT GROUP, INC.

BY SERVING THE SECRETARY OF STATE OFFICE OF THE SECRETARY OF STATE

CITATIONS UNIT - P.O. BOX 12079

AUSTIN, TEXAS, 78711

### **GREETINGS:**

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Your answer should be addressed to the clerk of the 14th District Court at 600 Commerce Street, Dallas Texas, 75202.

Said PLAINTIFF being Charlotte Loquasto; michael iubelt; shelby iubelt; julianne perry; kathleen perry; stewart perry; marissa brown; gail provost; meghan hollingsworth; sarah peterson; brian provost; spencer provost; louis provost; gertrude provost; katrina reeves; summer dunn; hannah mason; mallory reeves; charlotte reeves; chris colovita; samuel gabara; lakeia stokes; maggie bilyeu; india sellers; addie ford; robert healey; havlee rodriguez

Filed in said Court 14th day of May, 2019 against

FLUOR CORPORATION, INC.

FLUOR ENTERPRISES, INC.

FLUOR GOVERNMENT GROUP, INC.

ALLIANCE PROJECT SERVICES, INC.

FLUOR INTERCONTINENTAL, INC.

For suit, said suit being numbered DC-19-06872 the nature of which demand is as follows:

Suit On OTHER PERSONAL INJURY etc.

as shown on said petition & REQUEST FOR DISCLOSURE a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

CONEJO

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.

Given under my hand and the Seal of said Court at office on this the 16th day of May, 2019

ATTEST: FELICIA PITRE

Clerk of the District Courts of Dallas, County, Texas

By

\_, Deputy

CERT MAIL (SOS)

CITATION

No.: DC-19-06872

CHARLOTTE LOQUASTO; MICHAEL IUBELT; SHELBY IUBELT; JULIANNE PERRY; KATHLEEN PERRY; STEWART PERRY; MARISSA BROWN; GAIL PROVOST; MEGHAN HOLLINGSWORTH; SARAH PETERSON; BRIAN PROVOST; SPENCER PROVOST; LOUIS PROVOST; GERTRUDE

PROVOST; KATRINA REEVES; SUMMER DUNN; HANNAH MASON; MALLORY REEVES; CHARLOTTE REEVES; CHRIS COLOVITA; SAMUEL CABABA, LAKELA STOKES, MACCIE

SAMUEL GABARA; LAKEIA STOKES; MAGGIE BILYEU; INDIA SELLERS; ADDIE FORD; ROBERT HEALEY; HAYLEE RODRIGUEZ

VS.

FLUOR CORPORATION, INC.; FLUOR
ENTERPRISES, INC.; FLUOR GOVERNMENT

ENTERPRISES, INC.; FLUOR GOVERNMENT GROUP, INC.; ALLIANCE PROJECT SERVICES, INC.; FLUOR INTERCONTINENTAL, INC.

**ISSUED** 

ON THIS THE 16TH DAY OF MAY, 2019

FELICIA PITRE Clerk District Courts, Dallas County, Texas

By ANGELA CONEJO, Deputy

Attorney for: Plaintiff
ANTHONY G BUZBEE
JP MORGAN CHASE TOWER
600 TRAVIS, STE., 7300
HOUSTON, TEXAS 77002
713-223-5393

DALLAS COUNTY CONSTABLE

PAL

FEES NOT

### OFFICER'S RETURN FOR INDIVIDUALS

Cause No. DC-19-06872 Court No: 14th District Court Style: CHARLOTTE LOQUASTO, et al vs. FLUOR CORPORATION, INC., et al , 20 at o'clock. Executed at \_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ Received this Citation the , within the County of day of , State of \_\_, at o'clock, by delivering to the within named each in person, a copy of this Citation together with the accompanying copy of Plaintiff's original petition, having first indorsed on same the date of delivery. ----000000-----OFFICER'S RETURN FOR CORPORATIONS Received this Citation the o'clock .M. Executed at , 20\_\_\_\_, at \_\_\_\_\_o'clock \_\_\_ \_\_day of \_\_\_\_ , State of \_, on the \_ by summoning the within named Corporation, by delivering to President - Vice President - Registered Agent - in person, of the said a true copy of this citation together with the accompanying copy of PLAINTIFF'S ORIGINAL PETITION & REQUEST FOR DISCLOSURE, having first indorsed on same the date of delivery. -----0000000------The distance actually traveled by me in serving such process was \_\_\_\_ \_\_\_ miles and my fees are as follows: To certify which witness by my hand. Sheriff For Serving Citation For Mileage County of For Notary State of Total Fees By (Must be verified if served outside the State of Texas) State of County of Signed and sworn to me by the said before me this , 20 , to certify which witness my hand and seal of office. Seal State & County of

FELICIA PITRE DISTRICT CLERK Case 3:19-cv-01455-B | Document 1.-8 | Pilao 06/19/19 | Page 56 of 198 | PageID 85 GEORGE L. ALLEN, SR. COURTS BU 600 COMMERCE ST STE 101 DALLAS, TX. 75202-4604

9214 8901 0661 5400 0138 2467 89

RETURN RECEIPT (ELECTRONIC)

DC-19-06872 FLUOR GOVERNMENT GROUP, INC.

FLUOR GOVERNMENT GROUP, INC. OFFICE OF THE SECRETARY OF STATE CITATIONS UNIT PO BOX 12079 AUSTIN, TX 78711-2079

CUT FOLD HERE	Zone 3
	***********
6"X9" ENVELOPE CUT - FOLD HERE	
 CHT EOLD HEDE	

### FORM NO. 3534 CITATION THE STATE OF TEXAS

To: ALLIANCE PROJECT SERVICES, INC. BY SERVING THE SECRETARY OF STATE OFFICE OF THE SECRETARY OF STATE CITATIONS UNIT - P.O. BOX 12079 AUSTIN, TEXAS, 78711

### GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Your answer should be addressed to the clerk of the 14th District Court at 600 Commerce Street, Dallas Texas, 75202.

Said PLAINTIFF being CHARLOTTE LOQUASTO; MICHAEL IUBELT; SHELBY IUBELT; JULIANNE PERRY; KATHLEEN PERRY; STEWART PERRY; MARISSA BROWN; GAIL PROVOST; MEGHAN HOLLINGSWORTH; SARAH PETERSON; BRIAN PROVOST; SPENCER PROVOST; LOUIS PROVOST; GERTRUDE PROVOST; KATRINA REEVES; SUMMER DUNN; HANNAH MASON; MALLORY REEVES; CHARLOTTE REEVES; CHRIS COLOVITA; SAMUEL GABARA; LAKEIA STOKES; MAGGIE BILYEU; INDIA SELLERS; ADDIE FORD; ROBERT HEALEY; HAYLEE RODRIGUEZ

Filed in said Court 14th day of May, 2019 against FLUOR CORPORATION, INC. FLUOR ENTERPRISES, INC. FLUOR GOVERNMENT GROUP, INC. ALLIANCE PROJECT SERVICES, INC. FLUOR INTERCONTINENTAL, INC.

For suit, said suit being numbered DC-19-06872 the nature of which demand is as follows:

Suit On OTHER PERSONAL INJURY etc.

as shown on said petition & REQUEST FOR DISCLOSURE a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.

Given under my hand and the Seal of said Court at office on this the 16th day of May, 200

ATTEST: FELICIA PITRE

Clerk of the District Courts of Dallas, County, Tex

Deputy ANCHE CONEJO

CERT MAIL (SOS)

### CITATION

No.: DC-19-06872

CHARLOTTE LOQUASTO; MICHAEL IUBELT; SHELBY IUBELT; JULIANNE PERRY; KATHLEEN PERRY; STEWART PERRY; MARISSA BROWN; GAIL PROVOST; MEGHAN HOLLINGSWORTH; SARAH PETERSON; BRIAN PROVOST; SPENCER PROVOST; LOUIS PROVOST; GERTRUDE PROVOST; KATRINA REEVES; SUMMER DUNN; HANNAH MASON; MALLORY REEVES; CHARLOTTE REEVES; CHRIS COLOVITA: SAMUEL GABARA; LAKEIA STOKES; MAGGIE BILYEU; INDIA SELLERS; ADDIE FORD; ROBERT HEALEY; HAYLEE RODRIGUEZ

VS. FLUOR CORPORATION, INC.; FLUOR ENTERPRISES, INC.; FLUOR GOVERNMENT GROUP, INC.; ALLIANCE PROJECT SERVICES, INC.: FLUOR INTERCONTINENTAL, INC.

ISSUED

ON THIS THE 16TH DAY OF MAY, 2019

FELICIA PITRE Clerk District Courts, Dallas County, Texas

TO TO THE PROPERTY OF

DALLA

By ANGELA CONEJO, Deputy

Attorney for : Plaintiff ANTHONY G BUZBEE JP MORGAN CHASE TOWER 600 TRAVIS, STE., 7300 **HOUSTON, TEXAS 77002** 713-223-5393

DALLAS COUNTY CONSTABLE

FEES

FEES NOT

### OFFICER'S RETURN FOR INDIVIDUALS

Cause No. DC-19-06872 Court No: 14th District Court Style: CHARLOTTE LOQUASTO, et al vs. FLUOR CORPORATION, INC., et al , 20 at o'clock. Executed at , within the Cour , on the day of , 20 , at o'clock, by Received this Citation the day of \_\_\_\_, within the County of , State of delivering to the within named each in person, a copy of this Citation together with the accompanying copy of Plaintiff's original petition, having first indorsed on same the date of delivery. -----000000-----OFFICER'S RETURN FOR CORPORATIONS Received this Citation the o'clock \_\_\_.M. Executed at day of \_\_\_\_\_\_, within the County of \_\_\_\_\_, within the County of \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_.M. , State of \_, on the \_ by summoning the within named Corporation, by delivering to President - Vice President - Registered Agent - in person, of the said a true copy of this citation together with the accompanying copy of PLAINTIFF'S ORIGINAL PETITION & REQUEST FOR DISCLOSURE, having first indorsed on same the date of delivery. -----000000-----The distance actually traveled by me in serving such process was \_\_\_ miles and my fees are as follows: To certify which witness by my hand. Sheriff For Serving Citation For Mileage County of For Notary State of Total Fees By (Must be verified if served outside the State of Texas) State of County of Signed and sworn to me by the said before me this , to certify which witness my hand and seal of office. day of State & County of Seal

Page 59 of 198 PageID 88 FELICIA PITRE CASE 3:19-CV DISTRICT CLERK GEORGE L ALLEN, SR COURTS BU 600 COMMERCE ST STE 101 DALLAS, TX 75202-4604



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RETURN RECEIPT (ELECTRONIC)

DC-19-06872 ALLIA	NCF PROJEC	T SERVICES	INC.
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ALLIANCE PROJECT SERVICES, INC.
OFFICE OF THE SECRETARY OF STATE
CITATIONS UNIT
PO BOX 12079
AUSTIN, TX 78711-2079

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### **Shirley Montgomery**

### NO. DC19-06872

CHARLOTTE LOQUASTO, ET AL.,	§	IN THE DISTRICT COURT
	§	
PLAINTIFFS,	§	
V.	§	
	§	
FLUOR CORPORATION, INC., FLUOR	§	DALLAS COUNTY, TEXAS
ENTERPRISES, INC., FLUOR	§	
GOVERNMENT GROUP, INC., FLUOR	§	
INTERCONTINENTAL, INC., AND	§	
ALLIANCE PROJECT SERVICES, INC.,	§	
	§	A-14 JUDICIAL DISTRICT
DEFENDANTS.	-	

# FLUOR GOVERNMENT GROUP INTERNATIONAL, INC.'S¹ ORIGINAL ANSWER TO THE HONORABLE JUDGE MOYÉ:

Defendant FLUOR GOVERNMENT GROUP INTERNATIONAL, INC. ("Fluor") files this Original Answer to Plaintiffs' Original Petition, respectfully showing this Court the following:

### **GENERAL DENIAL**

1. Under Rule 92 of the Texas Rules of Civil Procedure, Fluor generally denies all material allegations contained within Plaintiffs' Original Petition, as well as any amendments or supplements thereto.

### AFFIRMATIVE OR ADDITIONAL DEFENSES

2. This Court lacks subject matter jurisdiction because Plaintiffs' claims raise nonjusticiable political questions under *Baker v. Carr*, 369 U.S. 186 (1962), and its progeny. Plaintiffs' suit questions the reasonableness of force protection and security at a United States Military base in an active conflict zone. Such military matters are quintessential sources of

<sup>&</sup>lt;sup>1</sup> Plaintiff improperly names Fluor Government Group International, Inc. as "Fluor Government Group, Inc."

political questions. See Taylor v. Kellogg Brown & Root Serv., Inc., 658 F.3d 402, 411-12 (4th Cir. 2011), Smith v. Halliburton Co., No. H-06-0462, 2006 WL 2521326 (S.D. Tex. Aug. 30, 2006), and Am. K-9 Detection Servs., Inc. v. Freeman, 556 S.W.3d 246 (Tex. 2018).

- 3. The political question doctrine bars Plaintiffs' claims because the Military exercised plenary control over Fluor's alleged conduct at issue. "When a contractor operates under the military's plenary control, the contractor's decisions may be considered de facto military decisions." *Freeman*, 556 S.W.3d at 255 (citing *Carmichael v. Kellogg, Brown & Root Servs., Inc.*, 572 F.3d 1271, 1276-77 (11th Cir. 2009)).
- 4. Even assuming *arguendo* that Fluor shared responsibilities regarding the base security or force protection matters at issue—though Fluor did not do so—Plaintiffs' suit implicates sensitive Military decisions and judgments because Fluor was invariably "operating pursuant to the military's orders, instructions, and regulations." *Smith*, 2006 WL 2521326, at \*5. When a plaintiff claims that a contractor performed paradigmatic military functions like force protection or base security, his or her suit will raise "the same political questions." *See id.* at \*5 (quoting *Whitaker v. Kellogg, Brown & Root, Inc.*, 444 F. Supp. 2d 1277, 1281 (M.D. Ga. 2006)). "[T]he use of [] civilian contractors to accomplish [a] military objective does not lessen the deference due to the political branches in this area." *Whitaker*, 444 F. Supp. 2d at 1281.
- 5. Plaintiffs' suit—both on its face and in substance—raises political questions because it implicates the reasonableness of Military decisions and judgments that directly "contribut[ed] to causation." *Freeman*, 556 S.W.3d at 255 (quoting *Lane v. Halliburton*, 529 F.3d 548, 561 (5th Cir. 2008)). Where the Military's acts or omissions contribute to causation, a "political question will loom large." *Id*.

- 6. Absent explosive material, there could be no bombing. The Military's negligent failure to prevent Ahmed Nayeb from bringing explosive material into BAF was the sole proximate cause of the incident in question, or alternatively, a superseding, intervening, and/or new and independent cause of the incident.
- 7. Fluor's causation defenses will "pose political questions [because] the court must disentangle the military's and the contractor's respective causal roles." *Freeman*, 556 S.W.3d at 255. Doing so will require the Court to question the reasonableness of Military decisions and judgments. *See id.* at 255-57.
- 8. Fluor invokes all rights, privileges, protections, and immunities under Chapters 32 and 33 of the Texas Civil Practice and Remedies Code. Fluor's invocation includes *inter alia* comparative responsibility; contributory negligence; and apportionment of responsibility to parties designated as responsible third parties under § 33.004. *See* Tex. Civ. Prac. & Rem. Code § 33.001 *et seq*.
- 9. The Military is subject to designation and apportionment under Chapter 33 of the Texas Civil Practice and Remedies Code. *See id.* "[T]he jury should allocate responsibility among all persons who are responsible for the claimant's injury, regardless of whether they are subject to the court's jurisdiction or whether there is some other impediment to the imposition of liability on them, such as statutory immunity." *Galbraith Eng'g Consultants, Inc. v. Pochucha*, 29 S.W.3d 863, 868 (Tex. 2009).
- 10. Because the suicide bomber ("Nayeb") managed to enter the base with explosives, "the court would [] have to examine base perimeter security," as well as screening measures, security badge issuance protocols, and escort procedures. *Smith*, 2006 WL 2521326, at \*6. Perimeter security at a United States Military base is textually committed to coordinate branches

of the Government. *Cafeteria and Restaurant Union, Local 473, AFL-CIO v. McElroy*, 367 U.S. 886, 890 (1961). The Military is in fact responsible for these—and all other—base security/force protection measures even in the absence of LOGCAP directives. *Smith*, 2006 WL 2521326, at \*3 (citing DoD Instruction 2000.16, Enclosure 3, at § E3.1.1.14.1 (June 14, 2001), and Army Field Manual 100-21 (Contractors on the Battlefield, at § 6-3 (Jan. 2003)).

- 11. The Military<sup>2</sup> knew in March of 2011 that Nayeb had ties to the Taliban. Nevertheless, the Military sponsored Nayeb's admittance to the Provincial Reconstruction Team *Parwan* (ROK)'s Vocational Training Center at BAF ("Parwan"). The Military granted Nayeb access to work at BAF because it believed that vocational training and employment would provide Nayeb "with the skills necessary to obtain honest employment and allow him to reject the insurgency's promise of money."
- 12. That Military action was part and parcel of the Military's larger "Afghan First" strategy to counter the Afghan insurgency. Through developing the Afghan economy, the Military believed that it would effectively "reduc[e] the pool of frustrated, unemployed men and women from which insurgents can readily recruit." *See* U.S. Government Counterinsurgency Guide, at p. 3 (Jan. 2009). "In times of turmoil, political, social, security, and economic benefits can often entice people to support one side or the other." *See* Army Field Manual 3-24 (Counterinsurgency), at 1-9, § 1-42 (Dec. 2006).
- 13. The Afghan First program was a direct outgrowth of these Military strategies, judgments, and beliefs that were at the heart of the Military's strategy in fighting an asymmetric war in Afghanistan. Correspondingly, Nayeb's employment and presence at BAF under Afghan First was a direct result of strategic and sensitive Military decisions and judgments.

<sup>&</sup>lt;sup>2</sup> Fluor was not aware before the bombing that Nayeb had previous ties to the Taliban because the Military did not share this intelligence with Fluor.

- 14. The Military—not Fluor—dictated and controlled all aspects of Nayeb's screening and access to BAF. Nonexclusive examples include—
  - The Military's "Task Force Red Bulls" decided that, pursuant Afghan First, sponsoring Nayeb for training and LOGCAP employment would further the Military's COIN strategies.
  - The Military decided to sponsor Nayeb for training and LOGCAP employment even though it knew that Nayeb had ties to the Taliban.
  - The Military contractually required Fluor to hire and retain Afghan nationals cleared for LOGCAP work, even requiring quarterly progress reports on the percentage of Afghans employed through LOGCAP contracts.
  - The Military's Force Protection Screening Cell ("FPSC") vetted Nayeb and cleared him for enrollment at Parwan.
  - The Military issued Nayeb the access badge that allowed him to enter BAF.
  - After Nayeb completed training at Parwan, the Military again screened, interviewed, and approved Nayeb for LOGCAP work on December 11, 2011.
  - The Military's screening and approval of Nayeb for LOGCAP employment resulted in Nayeb's placement in the pool of Militaryapproved Afghan nationals to support LOGCAP work under the Military's Afghan First initiative.
  - The Military subsequently screened, interviewed, and continued to approve Nayeb for LOGCAP work on *six* occasions before the bombing, including a March 2016 Preliminary Credibility Assessment Screening System ("PCASS") screening—a field expedient lie detector.
  - The Military alone operated and directed *daily* perimeter security at BAF, to include searching Nayeb and all other Afghan nationals that entered BAF through its quarter-mile long Entry Control Point 1 ("ECP-1") and/or other entry control points at BAF.
- 15. The Military negligently directed and approved Nayeb's employment for LOGCAP contract work when it alone had actual knowledge of Nayeb's ties to the Taliban. The

Military negligently failed to detect and report Nayeb's apparent re-radicalization. The Military negligently failed to prevent Nayeb from bringing explosive material into BAF.

- 16. Each of these nonexclusive acts and/or omissions constituted negligence that proximately caused the subject incident and injuries. The Military's negligence will bar Plaintiffs' claims in whole, or alternatively, in part, under §§ 33.003 and 33.012 of the Texas Civil Practice and Remedies Code.
- 17. Fluor's proportionate liability defense will inject political questions into this case. Freeman, 556 S.W.3d at 255-57 (citing Harris v. Kellogg, Brown & Root Servs., Inc., 724 F.3d 458, 466 (3d Cir. 2013), and Fisher v. Halliburton, 667 F.3d 602, 621 (5th Cir. 2012)). "Courts lack the facts, expertise, and standards necessary to evaluate whether reasonable care was taken in these circumstances." Smith, 2006 WL 2521326, at \*6; see also Freeman, 556 S.W.3d at 256 (citing Harris, 724 F.3d at 474). This is especially true where—as here—the Military's decision-making relates to battlefield strategy and intelligence gathering. Smith, 2006 WL 2521326, at \*5.
- 18. Deciding these issues would require the fact-finder to adjudicate the reasonableness of Military strategy and judgments in an active conflict zone. This Court cannot review such subject matter because it impermissibly concerns "how the executive, or executive officers, perform duties in which they have discretion." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 170, 177 (1803).
- 19. Pleading further, Fluor asserts that this court lacks subject matter jurisdiction in regard to the claims of the families of Peter Provost and Jarrold Reeves, as these claims are subject to the exclusive remedy provisions of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 905, as extended by the Defense Base Act, 42 U.S.C. §§ 1651-1654.

THEREFORE, Defendant FLUOR GOVERNMENT GROUP INTERNATIONAL, INC. respectfully requests that Plaintiffs take nothing by way of their suit, and that Fluor have judgment for costs of suit, general relief, and such other and further relief to which it may show itself entitled in law or in equity.

Respectfully submitted,

### HARTLINE BARGER LLP

/s/ J. Reid Simpson

Darrell L. Barger State Bar No. 01733800 Adam L. Anthony State Bar No. 24087109 1980 Post Oak Blvd. Suite 1800 Houston, Texas 77056 (713) 759-1990 (713) 652-2419 (Fax) dbarger@hdbdlaw.com aanthony@hdbdlaw.com

### **AND**

J. Reid Simpson State Bar No. 24072343 800 N. Shoreline Blvd. Suite 2000, North Tower Corpus Christi, Texas 78401 (361) 866-8000 (361) 866-8037 (Fax) rsimpson@hdbdlaw.com

**Counsel for Fluor Government Group International, Inc.** 

### **Certificate of Service**

The undersigned certifies that on June 10, 2019, Defendant Fluor Government Group International, Inc. served a true and correct copy of the foregoing document on all known counsel of record under the Texas Rules of Civil Procedure.

/s/ J. Reid Simpson
Darrell L. Barger

FILED
DALLAS COUNTY
6/10/2019 1:54 PM
FELICIA PITRE
DISTRICT CLERK
Kellie Juricek

### **CAUSE NO. DC-19-06872**

CHARLOTTE LOQUASTO, MICHAEL IUBELT, SHELBY IUBELT, INDIVIDUALLY, ON BEHALF OF THE ESTATE OF PFC TYLER IUBELT, AND AS NEXT FRIEND OF V.I., MINOR, JULIANNE PERRY, INDIVIDUALLY, ON BEHALF OF THE ESTATE OF STAFF SGT. JOHN PERRY, DECEASED, AND AS NEXT FRIEND OF L.P. AND G.P., MINORS, KATHLEEN PERRY, STEWART PERRY, MARISSA BROWN, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF SGT. FIRST CLASS ALLAN E. BROWN, DECEASED, GAIL PROVOST, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF PETER PROVOST, DECEASED, MEGHAN HOLLINGSWORTH, SARAH PETERSON, BRIAN PROVOST, GERTRUDE PROVOST, LOUIS PROVOST, GERTRUDE PROVOST, KATRINA REEVES, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF COL. JARROLD REEVES (RET.), DECEASED, AND AS NEXT FRIEND OF J.R., A MINOR, SUMMER DUNN, HANNAH MASON, MALLORY REEVES, CHARLOTTE REEVES, CHRIS COLOVITA, SAMUEL GABARA, LAKEIA STOKES, MAGGIE BILYEU, INDIA SELLERS, ADDIE FORD, ROBERT HEALY and HAYLEE RODRIGUEZ	w w w w w w w w w w w w w w w w w w w	OF DALLAS COUNTY, TEXAS
	§	
FLUOR CORPORATION, INC., FLUOR ENTERPRISES, INC.,	§ §	
FLUOR GOVERNMENT GROUP, INC.,	§	
FLUOR INTERCONTINENTAL, INC. and	§	
ALLIANCE PROJECT SERVICES, INC.	§	14 JUDICIAL DISTRICT COURT

### DEFENDANT ALLIANCE PROJECT SERVICES, INC.'S VERIFIED SPECIAL APPEARANCE

Defendant Alliance Project Services, Inc. ("APS") asks the Court to sustain its Verified Special Appearance and dismiss the above-named Plaintiffs' suit as to APS. This special appearance is made to the entire proceeding asserted by Plaintiffs, as against APS.

### **INTRODUCTION**

- 1. Texas courts may not exercise either general personal jurisdiction over APS or specific personal jurisdiction over APS. The evidence filed with this Special Appearance demonstrates that: (1) Texas cannot exercise specific personal jurisdiction over APS because the tort causes of action asserted against APS have no connection to Texas; and (2) APS is not "at home" in the State of Texas—Texas courts may not exercise general personal jurisdiction over APS.
- 2. Defendant APS is a Delaware corporation with its principal place of business in Virginia.
- 3. On information and belief, Defendant Fluor Corporation, Inc. is a Delaware corporation.
- 4. On information and belief, Defendant Fluor Enterprises, Inc. is a California corporation.
- 5. On information and belief, Defendant Fluor Intercontinental, Inc. ("Fluor Intercontinental") is a California corporation.
- 6. On information and belief, Defendant Fluor Government Group, Inc. is a Delaware corporation.

- 7. Plaintiffs sued Defendant APS alleging negligence and gross negligence arising out of a November 12, 2016 suicide bombing at Bagram Air Field ("BAF") in Bagram, Afghanistan.
- 8. The suicide bomber was an Afghan national who worked in a vehicle yard at BAF.
- 9. Pursuant to a contract between APS and Defendant Fluor Intercontinental (the "Contract"), APS provided labor supply management services with respect to Host Country National (HCN) employees for Fluor Intercontinental's operations in Afghanistan.
- 10. The Contract was formed, performed, and administered between Virginia, South Carolina, and Bagram, Afghanistan. No performance by APS under the Contract was due or rendered within the State of Texas.
- 11. The Plaintiffs' Petition fails to allege specific facts that their cause of action against APS has any relation to Texas.
- 12. This motion is supported by the Verification ("Verification") and the Affidavit of Tod E. Nickles ("Nickles' Affidavit"), attached as Exhibit 1, which demonstrate jurisdiction against APS in Texas fails because: an assertion of personal jurisdiction over APS by Texas courts would violate APS's due process rights, APS lacks minimum contacts, and Texas lacks personal jurisdiction, either general or specific, over APS.
- 13. This special appearance motion is filed before any motion or any other plea, pleading, or motion filed by APS.

### **JURISDICTIONAL FACTS**

14. APS is a corporation organized under Delaware law. Its principal place of business is located in Leesburg, Virginia. *See* Exhibit 1, Nickles' Affidavit, ¶3.

- 15. On November 12, 2016, Ahmed Nayeb ("Nayeb"), an Afghan national who worked in a vehicle yard at BAF in Bagram, Afghanistan, conducted a suicide bombing at BAF. See Exhibit 1, Nickles' Affidavit, ¶4.
- 16. Pursuant to a contract between APS and Fluor Intercontinental (the "Contract"), APS provided labor supply management services with respect to Host Country National (HCN) employees for Fluor's operations in Afghanistan, including services related to Nayeb's employment. *See* Exhibit 1, Nickles' Affidavit, ¶5.
- 17. APS was awarded the Contract after it responded to a request for proposal (RFP) generated out of Bagram, Afghanistan. The Contract was awarded out of Fluor Intercontinental's Greenville, South Carolina office. The Contract was performed and administered by APS employees located in Virginia and Bagram, and Fluor employees located in South Carolina and Bagram. No performance by APS under the Contract was due or rendered within the State of Texas. APS did not have any contacts with the State of Texas that relate to Nayeb, the Contract, or Plaintiff. *See* Exhibit 1, Nickles' Affidavit, ¶6.
  - 18. APS has no offices in Texas. See Exhibit 1, Nickles' Affidavit, ¶7.
  - 19. APS has no employees in Texas. See Exhibit 1, Nickles' Affidavit, ¶8.
- 20. APS is not registered to do business in Texas. *See* Exhibit 1, Nickles' Affidavit, ¶9.
- 21. APS has not appointed an agent for service of process in Texas. See Exhibit 1, Nickles' Affidavit, ¶10.
- 22. APS does not direct advertising to the State of Texas. See Exhibit 1, Nickles' Affidavit, ¶11.

- 23. APS operates a "passive" website used only for providing information, advertising, and allowing a potential customer to contact APS. The APS website does not allow a user to consummate a transaction with APS for its products or services. *See* Exhibit 1, Nickles' Affidavit, ¶12.
- 24. APS made a single product sale delivered to Texas for goods valued at \$659.92. That product sale had no connection with Nayeb, the Contract, or Plaintiffs. *See* Exhibit 1, Nickles' Affidavit, ¶13.

### **ARGUMENT & AUTHORITIES**

- 25. Plaintiffs' Petition acknowledges that APS is a Delaware corporation with its principal place of business in Virginia. Plaintiffs' sole jurisdictional allegation against APS is that "[APS] does and continues to do extensive business in the State of Texas[.]" (Petition p. 21.) Plaintiffs' jurisdictional allegation as to APS is not only false, it is facially insufficient to establish specific or general jurisdiction over APS in Texas. APS's *de minimus* business activities in Texas have no connection to the injuries suffered by Plaintiffs and cannot give rise to specific jurisdiction over APS in Texas. Nor are they even close to sufficient to make APS "at home" in Texas under controlling Supreme Court precedent. As a result, personal jurisdiction is lacking over APS and the court should dismiss APS.
- 26. Texas courts do not have jurisdiction over a nonresident defendant unless the defendant has purposefully established "minimum contacts" with Texas and the court's exercise of jurisdiction comports with "fair play and substantial justice." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474–76 (1985); *TV Azteca, S.A.B. de C.V. v. Ruiz*, 490 S.W.3d 29, 36 (Tex. 2016); *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 575 (Tex. 2007); *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002).

### NO MINIMUM CONTACTS

- 27. Texas courts must determine whether a nonresident defendant has purposefully established minimum contacts with Texas. *Moki Mac*, 221 S.W.3d at 575–76; *CSR Ltd. v. Link*, 925 S.W.2d 591, 594, 596 (Tex. 1996); *Guardian Royal Exch. Assur., Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 226 (Tex. 1991). To prove it had no minimum contacts with Texas, the defendant must show that (1) it did not purposefully avail itself of the privilege of conducting activities within Texas, and (2) any contacts it may have had with Texas do not give rise to specific or general jurisdiction. *See M&F Worldwide Corp. v. Pepsi-Cola Metro. Bottling Co.*, 512 S.W.3d 878, 886 (Tex. 2017); *Moki Mac*, 221 S.W.3d at 575–76; *Commonwealth Gen. Corp. v. York*, 177 S.W.3d 923, 925 (Tex. 2005); *BMC Software*, 83 S.W.3d at 795–96.
- 28. To establish purposeful availment, a defendant's acts must be purposeful rather than random, isolated, or fortuitous, and the defendant must have sought some benefit, advantage, or profit in availing itself of Texas jurisdiction. *M&F Worldwide*, 512 S.W.3d at 886; *Searcy v. Parex Res., Inc.*, 496 S.W.3d 58, 67 (Tex. 2016); *TV Azteca*, 490 S.W.3d at 37–38; *Retamco Operating, Inc. v. Republic Drilling Co.*, 278 S.W.3d 333, 338–39 (Tex. 2009); *Moki Mac*, 221 S.W.3d at 575; *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 785 (Tex. 2005). Specifically, APS did not purposefully avail itself of the privilege of conducting activities within Texas for the following reasons:
  - a. APS does not direct advertising to the State of Texas.
  - b. APS operates a "passive" website used only for providing information, advertising, and allowing a potential customer to contact APS. The APS website does not allow a user to consummate a transaction with APS for its products or services.

c. APS made one product sale delivered to Texas for goods valued at \$659.92, which was unrelated to Nayeb, the Contract, or Plaintiffs.

### NO SPECIFIC JURISDICTION

29. Texas courts cannot exercise specific jurisdiction over a nonresident defendant unless the plaintiff's litigation results from injuries that are alleged to arise from or relate to the defendant's contacts with Texas. *M&F Worldwide*, 512 S.W.3d at 886; *Moncrief Oil Int'l v. OAO Gazprom*, 414 S.W.3d 142, 156 (Tex. 2013); *Moki Mac*, 221 S.W.3d at 575–76; *BMC Software*, 83 S.W.3d at 796; *see Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 & n.8 (1984); *TV Azteca*, 490 S.W.3d at 52; *Michiana*, 168 S.W.3d at 784–85. The defendant's acts must have a substantial connection with the operative facts of the litigation. *M&F Worldwide*, 512 S.W.3d at 890; *TV Azteca*, 490 S.W.3d at 52; *Spir Star AG v. Kimich*, 310 S.W.3d 868, 874 (Tex. 2010); *Retamco Operating*, 278 S.W.3d at 340; *Moki Mac*, 221 S.W.3d at 585. This Court does not have specific jurisdiction over APS because Plaintiffs' cause of action does not arise from or relate to APS's limited contact with Texas. Plaintiffs' cause of action arises from APS's contacts with South Carolina and Bagram, Afghanistan. Plaintiffs allege no lawsuit-related contacts with the State of Texas, and no such contacts exist. Accordingly, there is no basis for specific personal jurisdiction over APS.

### NO GENERAL JURISDICTION

30. Texas courts cannot exercise general jurisdiction over a nonresident defendant unless the defendant has affiliations with Texas that are so continuous and systematic as to render the defendant essentially "at home" in Texas. *See Daimler AG v. Bauman*, 571 U.S. 117, 138–39, 134 S. Ct. 746, 761 (2014); *PHC-Minden, L.P. v. Kimberly-Clark Corp.*, 235 S.W.3d 163, 169 (Tex. 2007); *Booth v. Kontomitras*, 485 S.W.3d 461, 478 (Tex. App.—Beaumont 2016,

no pet.); Bautista v. Trinidad Drilling Ltd., 484 S.W.3d 491, 499 (Tex. App.—Houston [1st Dist.] 2016, no pet.). A corporation is considered at home where it is incorporated or where it has its principal place of business. Daimler AG, 571 U.S. at 137, 134 S. Ct. at 760; Bautista, 484 S.W.3d at 500. A corporate defendant will be subject to general jurisdiction in a forum other than its place of incorporation or principal place of business only in an exceptional case in which its affiliations with that forum are so substantial to render it at home there. See Daimler AG, 571 U.S. at 139 n.19, 134 S. Ct. at 761; Searcy, 496 S.W.3d at 73; Booth, 485 S.W.3d at 479; In re Deutsche Bank Sec. Inc., No. 03-14-00744-CV (Tex. App.—Austin 2015, orig. proceeding) (memo op.; 7-3-15). This Court does not have general jurisdiction over APS because APS is not incorporated in Texas and does not have its principal place of business in Texas. Moreover, APS has no offices in Texas, no employees in Texas, is not registered to do business in Texas, directs no advertising towards Texas, and has made only one product sale that was delivered to Texas, which was valued at \$659.92. Under these facts, this is not an exceptional case in which APS's affiliations with Texas are so substantial as to render it at home in Texas. Accordingly, general jurisdiction is lacking over APS in Texas.

### NO FAIR PLAY AND SUBSTANTIAL JUSTICE

- 31. An assertion of jurisdiction over APS by this Court will offend traditional notions of fair play and substantial justice and will be inconsistent with the constitutional requirements of due process; therefore, the Court should decline to exercise jurisdiction over APS. *See Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *TV Azteca*, 490 S.W.3d at 55; *Moncrief*, 414 S.W.3d at 154-55; *Spir Star*, 310 S.W.3d at 878; *Guardian Royal*, 815 S.W.2d at 231.
- 32. However, given the insufficient bases for personal jurisdiction over APS based on either general or specific jurisdiction, the Court actually need not reach a fair play and substantial

justice analysis in order to dismiss APS from this case. To the extent the Court is inclined to do so, hailing APS into court in Texas offends due process because APS has had no interaction with Texas relevant to the facts of this case. Given the existence of other suitable domestic forums in which jurisdiction could be established over all parties, it would offend traditional notions of fair play and substantial justice to force APS to litigate in a forum to which it has no relevant connection.

### **CONCLUSION**

33. APS does not have the minimum contacts with the State of Texas to justify a Texas court's assertion of jurisdiction. If this Court asserts jurisdiction over APS, it will offend traditional notions of fair play and substantial justice.

### **PRAYER**

34. For these reasons, APS asks the Court to set its special appearance for hearing and, after the hearing, sustain APS's special appearance and sign a final judgment dismissing Plaintiffs' cause of action as asserted against APS.

Respectfully submitted,

### FOX ROTHSCHILD LLP

By: /s/ C. Dunham Biles
David Grant Crooks
State Bar No. 24028168
C. Dunham Biles
State Bar No. 24042407
Two Lincoln Centre
5420 LBJ Freeway, Suite 1200
Dallas, Texas 75240
972-991-0889 – Phone
972-404-0516 – Fax
dcrooks@foxrothschild.com
cbiles@foxrothschild.com

ATTORNEY FOR DEFENDANT ALLIANCE PROJECT SERVICES, INC.

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 10th day of June, 2019, a true and correct copy of the above and foregoing document was served upon all counsel of record through the electronic filing service.

/s/ C. Dunham Biles

C. Dunham Biles

### **VERIFICATION**

STATE OF VIRGINIA §
COUNTY OF LOUDOUN §

Before me, the undersigned Notary Public, on this day personally appeared Tod E. Nickles, and after being duly sworn stated under oath that he is an authorized representative of Defendant Alliance Project Services, Inc. and has read the above Special Appearance Motion and that every factual statement contained in the Special Appearance Motion in paragraphs 14-24 is within his personal knowledge and is true and correct.

By: Tod E. Nickles

For: Alliance Project Services, Inc.

Its: President & CEO

Lisa Galto Mowery
Commonwealth of Virginia
Notary Public
Commission No. 7503034
My Commission Expires 1/31/2023

Notary Public in and for the

State of Virginia

My Commission Expires: 1/3//23

# EXHIBIT 1

## **CAUSE NO. DC-19-06872**

CHARLOTTE LOQUASTO, MICHAEL IUBELT, SHELBY IUBELT, INDIVIDUALLY, ON BEHALF OF THE ESTATE OF PFC TYLER IUBELT, AND AS NEXT FRIEND OF V.I., MINOR, JULIANNE PERRY, INDIVIDUALLY, ON BEHALF OF THE ESTATE OF STAFF SGT.	w w w w w w	IN THE DISTRICT COURT
JOHN PERRY, DECEASED, AND AS NEXT	§	
FRIEND OF L.P. AND G.P., MINORS,	§	
KATHLEEN PERRY, STEWART PERRY,	§	
MARISSA BROWN, INDIVIDUALLY AND	§	
ON BEHALF OF THE ESTATE OF SGT.	§	
FIRST CLASS ALLAN E. BROWN,	<b>§</b>	
DECEASED, GAIL PROVOST,	<b>§</b>	
INDIVIDUALLY AND ON BEHALF OF	<b>§</b>	
THE ESTATE OF PETER PROVOST,	<b>§</b>	
DECEASED, MEGHAN	<b>§</b>	
HOLLINGSWORTH, SARAH PETERSON,	<b>§</b>	
BRIAN PROVOST, SPENCER PROVOST,	<b>§</b>	OF DALLAS COUNTY, TEXAS
LOUIS PROVOST, GERTRUDE PROVOST,	<b>§</b>	
KATRINA REEVES, INDIVIDUALLY AND	<b>§</b>	
ON BEHALF OF THE ESTATE OF COL.	<b>§</b>	
JARROLD REEVES (RET.), DECEASED,	<b>§</b>	
AND AS NEXT FRIEND OF J.R., A MINOR,	<b>§</b>	
SUMMER DUNN, HANNAH MASON,	<b>§</b>	
MALLORY REEVES, CHARLOTTE	<b>§</b>	
REEVES, CHRIS COLOVITA, SAMUEL	§	
GABARA, LAKEIA STOKES, MAGGIE	§	
BILYEU, INDIA SELLERS, ADDIE FORD,	§	
ROBERT HEALY and HAYLEE	<b>§</b>	
RODRIGUEZ	<b>§</b>	
***	§	
VS.	§	
	<b>§</b>	
FLUOR CORPORATION, INC.,	<b>§</b>	
FLUOR ENTERPRISES, INC.,	<b>§</b>	
FLUOR GOVERNMENT GROUP, INC.,	§ §	
FLUOR INTERCONTINENTAL, INC. and		
ALLIANCE PROJECT SERVICES, INC.	§	14 JUDICIAL DISTRICT COURT

### **AFFIDAVIT OF TOD E. NICKLES**

STATE OF VIRGINIA §
COUNTY OF LOUDOUN §

BEFORE ME, the undersigned Notary Public, on this day personally appeared Tod E. Nickles, known to me to be the person whose name is subscribed below, who being duly sworn, deposed and states as follows:

- 1. My name is Tod E. Nickles. I am over eighteen (18) years of age of sound mind and am competent to make this affidavit. I have personal knowledge of the facts contained in this affidavit and they are true and correct.
- 2. I am the President and Chief Executive Officer of Alliance Project Services, Inc. ("APS"). I have personal knowledge of APS's business and dealings described in this affidavit.
- 3. APS is a corporation organized under the Delaware law. Its principal place of business is located in Leesburg, Virginia.
- 4. On November 12, 2016, Ahmed Nayeb ("Nayeb"), an Afghan national who worked in a vehicle yard at Bagram Air Field ("BAF") in Bagram, Afghanistan, conducted a suicide bombing at BAF.
- 5. Pursuant to a contract between APS and Fluor Intercontinental, Inc. ("Fluor Intercontinental") (the "Contract"), APS provided labor supply management services with respect to Host Country National (HCN) employees for Fluor's operations in Afghanistan, including services related to Nayeb's employment.
- 6. APS was awarded the Contract after it responded to a request for proposal (RFP) generated out of Bagram, Afghanistan. The Contract was awarded out of Fluor Intercontinental's Greenville, South Carolina office. The Contract was performed and

administered by APS employees located in Virginia and Bagram, and Fluor employees located in South Carolina and Bagram. No performance by APS under the Contract was due or rendered within the State of Texas. To my knowledge, APS did not have any contacts with the State of Texas that relate to Nayeb, the Contract, or Plaintiff.

- 7. APS has no offices in Texas.
- 8. APS has no employees in Texas.
- 9. APS is not registered to do business in Texas.
- 10. APS has not appointed an agent for service of process in Texas.
- 11. APS does not direct advertising to the State of Texas.
- 12. APS operates a website used only for providing information, advertising, and allowing a potential customer to contact APS. The APS website does not allow a user to consummate a transaction with APS for its products or services.
- 13. APS made a single product sale delivered to Texas for goods valued at \$659.92. That product sale had no connection with Nayeb, the Contract, or Plaintiffs.

FURTHER AFFIANT SAYETH NOT.

TOD E. NICKLES

SUBSCRIBED AND SWORN TO before me this 1 day of June, 2019.

Lisa Gaito Mowery
Commonwealth of Virginia
Notary Public
Commission No. 7503934
My Commission Expires 1/31/2023

Notary Public, State of Virginia

My Commission Expires:\_

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FORM NO. 3534 CITATION THE STATE OF TEXAS

To: FLUOR GOVERNMENT GROUP, INC. BY SERVING THE SECRETARY OF STATE OFFICE OF THE SECRETARY OF STATE CITATIONS UNIT - P.O. BOX 12079

AUSTIN, TEXAS, 78711

#### GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Your answer should be addressed to the clerk of the 14th District Court at 600 Commerce Street, Dallas Texas, 75202.

Said PLAINTIFF being Charlotte Loquasto; michael hubelt; shelby hubelt; julianne perry; kathleen perry; stewart perry; marissa brown; gail provost; meghan hollingsworth; sarah peterson; brian provost; spencer provost; louis provost; gertrude provost; katrina reeves; summer dunn; hannah mason; mallory reeves; charlotte reeves; chris colovita; samuel gabara; lakeia stokes; maggie bilyeu; india sellers; addie ford; robert healey; havlee rodriguez

Filed in said Court 14th day of May, 2019 against FLUOR CORPORATION, INC. FLUOR ENTERPRISES, INC. FLUOR GOVERNMENT GROUP, INC. ALLIANCE PROJECT SERVICES, INC. FLUOR INTERCONTINENTAL, INC.

For suit, said suit being numbered DC-19-06872 the nature of which demand is as follows: Suit On OTHER PERSONAL INJURY etc.

as shown on said petition & REQUEST FOR DISCLOSURE a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.

Given under my hand and the Seal of said Court at office on this the 16th day of May, 2019

ATTEST: FELICIA PITRE

Clerk of the District Courts of Dallas, County, Texas

By Deputy

CITATION

No.: DC-19-06872

CHARLOTTE LOQUASTO; MICHAEL IUBELT; SHELBY IUBELT; JULIANNE PERRY; KATHLEEN PERRY; STEWART PERRY; MARISSA BROWN; GAIL PROVOST; MEGHAN HOLLINGSWORTH; SARAH PETERSON; BRIAN PROVOST; SPENCER PROVOST; LOUIS PROVOST; GERTRUDE

PROVOST; KATRINA REEVES; SUMMER DUNN; HANNAH MASON; MALLORY REEVES; CHARLOTTE REEVES; CHRIS COLOVITA;

SAMUEL GABARA; LAKEIA STOKES; MAGGIE BILYEU; INDIA SELLERS; ADDIE FORD; ROBERT HEALEY; HAYLEE RODRIGUEZ

VS.

FLUOR CORPORATION, INC.; FLUOR
ENTERPRISES, INC.; FLUOR GOVERNMENT

ENTERPRISES, INC.; FLUOR GOVERNMENT GROUP, INC.; ALLIANCE PROJECT SERVICES, INC.; FLUOR INTERCONTINENTAL, INC.

**ISSUED** 

ON THIS THE 16TH DAY OF MAY, 2019

FELICIA PITRE Clerk District Courts, Dallas County, Texas

By ANGELA CONEJO, Deputy

Attorney for: Plaintiff
ANTHONY G BUZBEE
JP MORGAN CHASE TOWER
600 TRAVIS, STE., 7300
HOUSTON, TEXAS 77002
713-223-5393

DALLAS COUNTY CONSTABLE

PAID

FEES NOT PAID

### OFFICER'S RETURN FOR INDIVIDUALS

Cause No. DC-19-06872 Court No: 14th District Court

Style: CHARLOTTE LOQUASTO, et al vs. FLUOR CORPORATION, INC., et al

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Date Produced: 05/21/2019

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Reference ID: 92148901066154000138246789 DC-19-06872 FLUOR GOVERNMENT GROUP, INC. FLUOR GOVERNMENT GROUP, INC. OFFICE OF THE SECRETARY OF STATE Citations Unit PO Box 12079 Austin, TX 78711-2079 9701 0661 5900 0138 2468 88

FORM NO. 3534 CITATION THE STATE OF TEXAS

To: ALLIANCE PROJECT SERVICES, INC. BY SERVING THE SECRETARY OF STATE OFFICE OF THE SECRETARY OF STATE CITATIONS UNIT - P.O. BOX 12079 AUSTIN, TEXAS, 78711



#### GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Your answer should be addressed to the clerk of the 14th District Court at 600 Commerce Street, Dallas Texas, 75202.

Said PLAINTIFF being Charlotte Loquasto; michael iubelt; shelby iubelt; julianne perry; kathleen perry; stewart perry; marissa brown; gail provost; meghan hollingsworth; sarah peterson; brian provost; spencer provost; louis provost; gertrude provost; katrina reeves; summer dunn; hannah mason; mallory reeves; charlotte reeves; chiris colovita; samuel gabara; lakeia stokes; maggie bilyeu; india sellers; addie ford; robert healey; haylee rodriguez

Filed in said Court 14th day of May, 2019 against FLUOR CORPORATION, INC. FLUOR ENTERPRISES, INC. FLUOR GOVERNMENT GROUP, INC. ALLIANCE PROJECT SERVICES, INC. FLUOR INTERCONTINENTAL, INC.

For suit, said suit being numbered DC-19-06872 the nature of which demand is as follows: Suit On OTHER PERSONAL INJURY etc.

as shown on said petition & REQUEST FOR DISCLOSURE a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

, Deputy

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.

Given under my hand and the Seal of said Court at office on this the 16th day of May, 20

ATTEST: FELICIA PITRE

Clerk of the District Courts of Dallas, County, Tex

ANCHA CONEJO



CERT MAIL (SOS)

CITATION

No.: DC-19-06872

CHARLOTTE LOQUASTO; MICHAEL IUBELT;
SHELBY IUBELT; JULIANNE PERRY; KATHLEEN
PERRY; STEWART PERRY; MARISSA BROWN;
GAIL PROVOST; MEGHAN HOLLINGSWORTH;
SARAH PETERSON; BRIAN PROVOST; SPENCER
PROVOST; LOUIS PROVOST; GERTRUDE
PROVOST; KATRINA REEVES; SUMMER DUNN;
HANNAH MASON; MALLORY REEVES;
CHARLOTTE REEVES; CHRIS COLOVITA;
SAMUEL GABARA; LAKEIA STOKES; MAGGIE
BILYEU; INDIA SELLERS; ADDIE FORD; ROBERT
HEALEY; HAYLEE RODRIGUEZ

VS.
FLUOR CORPORATION, INC.; FLUOR
ENTERPRISES, INC.; FLUOR GOVERNMENT
GROUP, INC.; ALLIANCE PROJECT SERVICES,
INC.; FLUOR INTERCONTINENTAL, INC.

ISSUED

ON THIS THE 16TH DAY OF MAY, 2019

FELICIA PITRE Clerk District Courts, Dallas County, Texas

By ANGELA CONEJO, Deputy

Attorney for: Plaintiff
ANTHONY G BUZBEE
JP MORGAN CHASE TOWER
600 TRAVIS, STE., 7300
HOUSTON, TEXAS 77002
713-223-5393

DALLAS COUNTY CONSTABLE

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### OFFICER'S RETURN FOR INDIVIDUALS

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Date Produced: 05/21/2019

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Reference ID: 92148901066154000138246888 DC-19-06872 ALLIANCE PROJECT SERVICES, INC. ALLIANCE PROJECT SERVICES, INC. OFFICE OF THE SECRETARY OF STATE Citations Unit PO Box 12079 Austin, TX 78711-2079

DALLAS COUNTY 6/17/2019 3:35 PM FELICIA PITRE DISTRICT CLERK Kellie Juricek

### No. DC19-06872

Charlotte Loquasto, et al.,	§	IN THE DISTRICT COURT
	§	
Plaintiffs,	§	
V.	§	
	§	
Fluor Corporation, Inc., Fluor Enterprises, Inc.,	§	DALLAS COUNTY, TEXAS
Fluor Government Group, Inc., Fluor	§	
Intercontinental, Inc., and Alliance Project	§	
Services, Inc.,	§	
	§	
Defendants.	§	A-14 JUDICIAL DISTRICT

# FLUOR GOVERNMENT GROUP INTERNATIONAL, INC.'S<sup>1</sup> FIRST AMENDED ANSWER

TO THE HONORABLE JUDGE MOYÉ:

Defendant FLUOR GOVERNMENT GROUP INTERNATIONAL, INC. ("Fluor") files this First Amended Answer to Plaintiffs' Original Petition, respectfully showing this Court the following:

### **GENERAL DENIAL**

1. Under Rule 92 of the Texas Rules of Civil Procedure, Fluor generally denies all material allegations contained within Plaintiffs' Original Petition, as well as any amendments or supplements thereto.

### AFFIRMATIVE OR ADDITIONAL DEFENSES

2. This Court lacks subject matter jurisdiction because Plaintiffs' claims raise nonjusticiable political questions under *Baker v. Carr*, 369 U.S. 186 (1962), and its progeny. Plaintiffs' suit questions the reasonableness of force protection and security at a United States Military base in an active conflict zone. Such military matters raise quintessential political

<sup>&</sup>lt;sup>1</sup> Plaintiffs improperly name Fluor Government Group International, Inc. as "Fluor Government Group, Inc."

questions. See Taylor v. Kellogg Brown & Root Serv., Inc., 658 F.3d 402, 411-12 (4th Cir. 2011), Smith v. Halliburton Co., No. H-06-0462, 2006 WL 2521326 (S.D. Tex. Aug. 30, 2006), and Am. K-9 Detection Servs., Inc. v. Freeman, 556 S.W.3d 246 (Tex. 2018).

- 3. The political question doctrine bars Plaintiffs' claims because the Military exercised plenary control over Fluor's alleged conduct at issue. "When a contractor operates under the military's plenary control, the contractor's decisions may be considered de facto military decisions." *Freeman*, 556 S.W.3d at 255 (citing *Carmichael v. Kellogg, Brown & Root Servs., Inc.*, 572 F.3d 1271, 1276-77 (11th Cir. 2009)).
- 4. Even assuming *arguendo* that Fluor shared responsibilities regarding the base security or force protection matters at issue—though Fluor did not do so—Plaintiffs' suit implicates sensitive Military decisions and judgments because Fluor was invariably "operating pursuant to the military's orders, instructions, and regulations." *Smith*, 2006 WL 2521326, at \*5. When a plaintiff claims that a contractor performed paradigmatic military functions like force protection or base security, his or her suit will raise "the same political questions." *See id.* at \*5 (quoting *Whitaker v. Kellogg, Brown & Root, Inc.*, 444 F. Supp. 2d 1277, 1281 (M.D. Ga. 2006)). "[T]he use of [] civilian contractors to accomplish [a] military objective does not lessen the deference due to the political branches in this area." *Whitaker*, 444 F. Supp. 2d at 1281.
- 5. Plaintiffs' suit—both on its face and in substance—raises political questions because it implicates the reasonableness of Military decisions and judgments that directly "contribut[ed] to causation." *Freeman*, 556 S.W.3d at 255 (quoting *Lane v. Halliburton*, 529 F.3d 548, 561 (5th Cir. 2008)). Where the Military's acts or omissions contribute to causation, a "political question will loom large." *Id*.

- 6. Absent explosive material, there could be no bombing. The Military's negligent failure to prevent the suicide bomber, Ahmed Nayeb ("Nayeb"), from bringing explosive material into BAF was the sole proximate cause of the incident in question, or alternatively, a superseding, intervening, and/or new and independent cause of the incident.
- 7. Fluor's causation defenses will "pose political questions [because] the court must disentangle the military's and the contractor's respective causal roles." *Freeman*, 556 S.W.3d at 255. Doing so will require the Court to question the reasonableness of Military decisions and judgments. *See id.* at 255-57.
- 8. Fluor invokes all rights, privileges, protections, and immunities under Chapters 32 and 33 of the Texas Civil Practice and Remedies Code. Fluor's invocation includes *inter alia* comparative responsibility; contributory negligence; and apportionment of responsibility to parties designated as responsible third parties under § 33.004. *See* Tex. Civ. Prac. & Rem. Code § 33.001 *et seq*.
- 9. The Military is subject to designation and apportionment under Chapter 33 of the Texas Civil Practice and Remedies Code. *See id.* "[T]he jury should allocate responsibility among all persons who are responsible for the claimant's injury, regardless of whether they are subject to the court's jurisdiction or whether there is some other impediment to the imposition of liability on them, such as statutory immunity." *Galbraith Eng'g Consultants, Inc. v. Pochucha*, 29 S.W.3d 863, 868 (Tex. 2009).
- 10. Because Nayeb managed to enter the base with explosives, "the court would [] have to examine base perimeter security," as well as screening measures, security badge issuance protocols, and escort procedures. *Smith*, 2006 WL 2521326, at \*6. Perimeter security at a United States Military base is textually committed to coordinate branches of the Government. *Cafeteria*

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and Restaurant Union, Local 473, AFL-CIO v. McElroy, 367 U.S. 886, 890 (1961). The Military is in fact solely responsible for these—and all other—base security/force protection measures even in the absence of LOGCAP directives. Smith, 2006 WL 2521326, at \*3 (citing DoD Instruction 2000.16, Enclosure 3, at § E3.1.1.14.1 (June 14, 2001), and Army Field Manual 100-21 (Contractors on the Battlefield), at § 6-3 (Jan. 2003)).

- 11. The Military<sup>2</sup> knew in March of 2011 that Nayeb had ties to the Taliban. Nevertheless, the Military sponsored Nayeb's admittance to the Provincial Reconstruction Team *Parwan* (ROK)'s Vocational Training Center at BAF ("Parwan"). The Military granted Nayeb access to work at BAF because it believed that vocational training and employment would provide Nayeb with the skills necessary to obtain honest employment and allow him to reject the insurgency's promise of money.
- 12. That Military action was part and parcel of the Military's larger "Afghan First" strategy to counter the Afghan insurgency. Through mandating the employment of Afghans and developing the Afghan economy, the Military believed that it would effectively "reduc[e] the pool of frustrated, unemployed men and women from which insurgents can readily recruit." *See* U.S. Government Counterinsurgency Guide, at p. 3 (Jan. 2009). "In times of turmoil, political, social, security, and economic benefits can often entice people to support one side or the other." *See* Army Field Manual 3-24 (Counterinsurgency), at 1-9, § 1-42 (Dec. 2006).
- 13. The Afghan First program was a direct outgrowth of these Military strategies, judgments, and beliefs that were at the heart of the Military's larger strategy to prevail in an asymmetric war in Afghanistan. Thus, Nayeb's employment and presence at BAF pursuant to the

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<sup>&</sup>lt;sup>2</sup> Fluor was not aware before the bombing that Nayeb had previous ties to the Taliban because the Military did not share that information with Fluor.

Afghan First program was a direct result of strategic and sensitive Military decisions and judgments.

- 14. The Military—not Fluor—dictated and controlled all aspects of Nayeb's screening and access to BAF. Nonexclusive examples include—
  - The Military's "Task Force Red Bulls" decided that, pursuant Afghan First, sponsoring Nayeb for training and LOGCAP employment would further the Military's counterinsurgency ("COIN") strategies.
  - The Military decided to sponsor Nayeb for training and LOGCAP employment even though it knew that Nayeb had ties to the Taliban in a failed gambit to rehabilitate him.
  - The Military contractually required Fluor to hire and retain Afghan nationals cleared for LOGCAP work, even requiring quarterly progress reports on the percentage of Afghans employed through LOGCAP contracts.
  - The Military's Force Protection Screening Cell ("FPSC") vetted Nayeb and cleared him for enrollment at Parwan.
  - The Military issued Nayeb the access badge that allowed him to enter BAF.
  - After Nayeb completed training at Parwan, the Military again screened, interviewed, and approved Nayeb for LOGCAP work on December 11, 2011.
  - The Military's screening and approval of Nayeb for LOGCAP employment resulted in Nayeb's placement in the pool of Military-approved Afghan nationals to support LOGCAP work under the Military's Afghan First initiative.
  - The Military subsequently screened, interviewed, and continued to approve Nayeb for LOGCAP work on *six* occasions before the bombing, including a March 2016 Preliminary Credibility Assessment Screening System ("PCASS") screening—a field expedient lie detector.
  - The Military alone operated and directed *daily* perimeter security at BAF, to include searching Nayeb and all other Afghan nationals that entered BAF through its quarter-mile long Entry Control Point 1 ("ECP-1") and/or other entry control points at BAF.

- 15. The Military negligently directed and approved Nayeb's employment for LOGCAP contract work when it alone had actual knowledge of Nayeb's ties to the Taliban. The Military negligently failed to detect and report Nayeb's apparent re-radicalization. The Military negligently failed to prevent Nayeb from bringing explosive material into BAF.
- 16. Each of these nonexclusive acts and/or omissions constituted negligence that proximately caused the subject incident and injuries. The Military's negligence will bar Plaintiffs' claims in whole, or alternatively, in part, under §§ 33.003 and 33.013 of the Texas Civil Practice and Remedies Code.
- 17. Fluor's proportionate liability defense will inject political questions into this case. Freeman, 556 S.W.3d at 255-57 (citing Harris v. Kellogg, Brown & Root Servs., Inc., 724 F.3d 458, 466 (3d Cir. 2013), and Fisher v. Halliburton, 667 F.3d 602, 621 (5th Cir. 2012)). "Courts lack the facts, expertise, and standards necessary to evaluate whether reasonable care was taken in these circumstances." Smith, 2006 WL 2521326, at \*6; see also Freeman, 556 S.W.3d at 256 (citing Harris, 724 F.3d at 474). This is especially true where—as here—the Military's decision-making relates to battlefield strategy, force protection, and intelligence gathering. Smith, 2006 WL 2521326, at \*5.
- 18. Deciding these issues would require the fact-finder to adjudicate the reasonableness of Military strategy and judgments in an active conflict zone. This Court cannot review such subject matter because it impermissibly concerns "how the executive, or executive officers, perform duties in which they have discretion." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 170, 177 (1803).
- 19. Fluor further asserts that this Court lacks subject matter jurisdiction in regard to the claims of the families of Peter Provost and Jarrold Reeves, as these claims are subject to the

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exclusive remedy provisions of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 905, as extended by the Defense Base Act, 42 U.S.C. §§ 1651-1654.

- 20. Pleading further, the state secrets doctrine bars Plaintiffs' claims in their entirety. On its face, the case *sub judice* concerns matters with respect to which the Government will assert the state secrets privilege. "[I]f military secrets are 'so central to the subject matter of the litigation that any attempt to proceed will threaten disclosure of the privilege,' dismissal of the case is appropriate." *Zuckerbraun v. Gen. Dynamics Corp.*, 755 F. Supp. 1134, 1138 (D. Conn. 1990), *aff'd* 935 F.2d 544 (2d Cir. 1991) (quoting *Fitzgerald v. Penthouse Internat'l, Ltd.*, 776 F.2d 1236, 1241-42 (4th Cir. 1985)). Such is the case on these facts.
- Fluor maintains that no court may exercise subject matter jurisdiction over this case because Plaintiffs' suit raises nonjusticiable political questions. *See* pp. 1-6, ¶¶ 1-18. However, in the unlikely event that the Court does not dismiss this case on political question grounds, the Government's invocation of state secrets privilege with respect to matters central to the determination of this action will so hamper Fluor's defense "that the trier of fact is likely to reach an erroneous conclusion." *See, e.g., Zuckerbraun v. Gen. Dynamics Corp.*, 935 F.2d 544, 547 (2d Cir. 1991) (citing *Molerio v. F.B.I.*, 749 F.2d 815, 825 (D.C. Cir. 1984)). Such circumstances independently warrant dismissal under the state secrets doctrine. *See id.*

### PROPORTIONATE RESPONSIBILITY OF UNKNOWN CRIMINAL ACTORS

22. Fluor collectively designates unknown criminal actors as responsible "John Does" under Texas Civil Practice and Remedies Code § 33.004(j). The unknown persons are responsible third parties because they committed criminal acts that caused "the loss or injury that is the subject of [Plaintiffs'] lawsuit." *See* Tex. Civ. Prac. & Rem. Code § 33.004(j).

- 23. Major General Thomas S. James, Jr., U.S. Army, issued a "Report of Investigation" under Army Regulation ("AR") 15-6 with regard to the incident at issue in this case. Plaintiffs rely on Major General James' AR 15-6 Report in making their alleged liability claims against Fluor in this case. *Compare* Plaintiffs' Petition *with* Ex. 1 (AR 15-6 Report), *supra*.
- 24. The Government fashioned the AR 15-6 Report to suit is own interests and purposes and released only a heavily redacted version of the Report. Even the redacted version of the AR 15-6 Report released by the Government confirms that the suicide bombing was perpetrated not by Nayeb acting alone, but by Nayeb acting with unnamed co-conspirators.
- 25. The text of the AR 15-6 Report states that "no evidence suggests other Bagram Airfield Local National[s], including Nayeb's cousins, were coconspirators." *See* Ex. 1 (AR 15-6 Report), at p. 7 (para. 11.a(2)). At the same time, the exhibits to the Report also make clear that there were "co-conspirators to the suicide bomber," including *inter alia* a sworn statement by an officer of the Army's Criminal Investigation Division ("CID"). *See* Ex. 1 (AR 15-6 Report) at Exhibit 2A.
- 27. The Army CID officer averred under oath that he had "classified exhibits in [his] investigation produced from other military agencies who *identified co-conspirators to the suicide bomber*." *Id.* (emphasis added). He goes on—"[a]t this time, CID does not plan on listing the co-conspirators as subjects in the unclassified LER [Law-Enforcement Report] due to the classified means in which they were identified as subjects/co-conspirators." *Id.*
- 28. Other 15-6 interviewees averred that they have actual knowledge of "facilitation" that directly compromised Military-directed security measures and protocols in place at the time of the incident. For example, Afghan nationals were smuggling goods to trade for favors like

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"look[ing] away." See Ex. 1 (AR 15-6 Report), Exhibit 2J, at 3; and Exhibit 3O, at 7. The redacted report does not identify any persons that accepted payment for "look[ing] away," but it does assert that Nayeb was able to smuggle explosive material into BAF through one or more of BAF's ECPs during a four-month period.

- 29. According to a press report, "[t]he Afghan Taliban claimed responsibility soon after the bombing, saying the assailant was one of their fighters and that *they* had been planning it for four months," referring to unnamed Taliban co-conspirators. Harooni & Shams, *Intelligence gaps may have helped Afghan Taliban breach NATO fortress*, Reuters Nov. 23, 2016, <a href="https://www.reuters.com/article/us-afghanistan-usa-bomber-insight/intelligence-gaps-may-have-helped-afghan-taliban-breach-nato-fortress-idUSKBN13I2NN">https://www.reuters.com/article/us-afghanistan-usa-bomber-insight/intelligence-gaps-may-have-helped-afghan-taliban-breach-nato-fortress-idUSKBN13I2NN</a> (emphasis added).
- 30. Fluor collectively designates as "John Does" all persons that assisted Nayeb; conspired with Nayeb; or facilitated Nayeb's suicide bombing attack at BAF, whether they worked at BAF or remained off base, whether such assistance occurred before or during the course of Nayeb's attack. *See* Tex. Civ. Prac. & Rem. Code § 33.004(j). Section 33.004(j) authorizes Fluor's designation of the John Does as responsible third parties because the John Does committed criminal acts that caused the losses and/or injuries that are the subject of this suit. *Id*.
- 31. It is beyond dispute that Nayeb's suicide attack constituted criminal behavior. Nayeb intentionally, knowingly, recklessly, and/or negligently caused the deaths of multiple persons. *See* Tex. Penal Code §§ 19.02(b) (Murder), 19.04 (Manslaughter), and 19.05 (Criminally Negligent Homicide). Nayeb intentionally, knowingly, or recklessly caused serious bodily injury to multiple persons through use of a deadly weapon. *See* Tex. Penal Code §§ 22.01(a)(1) (Assault) and 22.02(a)(1), (2) (Aggravated Assault). Nayeb recklessly engaged in

conduct that placed others in imminent danger of serious bodily injury. *See* Tex. Penal Code § 22.05 (Deadly Conduct).

- 32. Under Texas Penal Code § 15.02, the John Does committed criminal acts by—(1) agreeing with Nayeb and/or one or more other persons that Nayeb would conduct the suicide attack in question, and (2) performing one or more overt acts in pursuance of their agreement and Nayeb's suicide attack. *See* Tex. Penal Code § 15.02(a)(1), (2) (Criminal Conspiracy).
- 33. Nayeb was a low-skilled laborer in the HAZMAT area of BAF's Non-Tactical Vehicle ("NTV") yard. He had access to benign, non-explosive substances pursuant to Military directives. His only formal education or vocational training consisted of training at BAF's Parwan vocation school. The Parwan vocational training school did not teach or instruct its attendees how to make or construct explosive devices such as that which Nayeb used in his attack.
- 34. On information and belief, Fluor asserts that one or more of the John Does "perform[ed] an overt act" in furtherance of Nayeb's suicide attack by constructing—or assisting Nayeb in the construction of—his suicide vest. *See* Tex. Penal Code § 15.02(a)(1), (2) (Criminal Conspiracy). Such criminal activity proximately caused the harm for which Plaintiffs seek recovery.
- 35. Military and Coalition Security Task Forces in charge of the BAF Ground Area Defense ("BAF GAD") were responsible for ensuring that personnel at ECPs performed physical security inspections on any personnel or vehicles entering or exiting BAF. Fluor had no input into the means, methods, or details of such physical searches of Nayeb or other Afghan Nationals entering or exiting BAF. Fluor also did not have input or control over the Military's random

searches or counterintelligence screenings of Nayeb. The Military—not Fluor—was responsible for ensuring that responsible personnel properly conducted all such searches.

- 36. Fluor asserts that one or more of the John Does facilitated and furthered Nayeb's suicide attack by "look[ing] away" and allowing Nayeb to smuggle explosive material through one or more BAF ECPs. *See* Ex. 1 (AR 15-6 Report), at 49 (para. 18.b(2)), Exhibit 2J (p. 3); and Exhibit 3O (p. 7). Further, on information and belief, one or more of the John Does furnished and/or accepted bribes, kickbacks, or payoffs to ensure that persons responsible for searching Nayeb "look[ed] away" and allowed Nayeb to smuggle explosive material into BAF. *See id.* Such activity in furtherance of Nayeb's suicide attack was criminal in nature and proximately caused the harm for which Plaintiffs seek recovery. *See* Tex. Penal Code § 15.02(a)(1), (2) (Criminal Conspiracy).
- 37. On the morning of the incident, Nayeb was supposed to take a transport bus or a "Tata" vehicle with other Afghan Nationals to depart BAF via ECP-1. Per the Military's Base Access Policy, three Military-trained escorts with yellow, Military-issued access badges were permitted to transport Nayeb and other Afghan nationals to ECP-1. Despite these Military-provided safety protocols and measures, the Military alleges that Nayeb evaded the escorts and walked from the NTV to the bombing site.
- 38. On information and belief, Fluor asserts that one or more of the John Does—including *inter alia* one or more of the John Does on BAF premises—acted as Nayeb's accomplice and facilitated and/or assisted Nayeb in evading escort on the morning of the incident. On information and belief, Fluor further asserts that one or more of the John Does facilitated and/or assisted Nayeb in traveling from the NTV yard to the site of the bombing.

- 39. Again, such activity—(1) furthered Nayeb's suicide attack, (2) constituted criminal activity, and (3) proximately caused the harm for which Plaintiffs seek recovery. *See* Tex. Penal Code § 15.02(a)(1), (2) (Criminal Conspiracy), and Tex. Civ. Prac. & Rem. Code § 33.004(j).
- 40. At this time, and on information and belief, the following is the only identifying characteristic of the John Does of which Fluor is aware—the John Does are members of or associated with the Taliban. The Government's heavy redaction of the AR 15-6 report—and the classified nature of information supporting the AR 15-6 report—prevent Fluor from providing any other identifying characteristics of one or more of the John Does.
- 41. Fluor's designation meets the requirements that the Legislature prescribed under § 33.004(j). Fluor "has pleaded facts sufficient for the court to determine that there is a reasonable probability that the act[s] of the unknown person[s] w[ere] criminal." *See* Tex. Civ. Prac. & Rem. Code § 33.004(j)(1). Fluor has stated in this Answer "all identifying characteristics of the unknown person[s], known at the time of th[is] answer." *Id.* at § 33.004(j)(2). Fluor's pleadings and allegations satisfy the fair notice pleading requirements of the Texas Rules of Civil Procedure. *Id.* at § 33.004(j)(3); *see also* Tex. R. Civ. P. 47, and *In re CVR Energy, Inc.*, 500 S.W.3d 67, 80 (Tex. App.—Houston [1st Dist.] 2016, orig. proceeding) ("The applicable Rule of Civil Procedure is Rule 47, which is our 'notice' pleading rule.").
- 42. Fluor's designation is also timely. Under § 33.004(j), the defendant must designate unknown criminal actors "not later than 60 days after the filing of the defendant's original answer." Fluor files this Amended Answer and § 33.004(j) designation within seven days of its June 10, 2019 Original Answer.

43. Accordingly, under § 33.004(j), "the court shall grant" a motion for leave to designate the John Does (collectively) as responsible third parties.

### **PRAYER**

THEREFORE, Defendant FLUOR GOVERNMENT GROUP INTERNATIONAL, INC. respectfully requests that Plaintiffs take nothing by way of their suit, and that Fluor have judgment for costs of suit, general relief, and such other and further relief to which it may show itself entitled in law or in equity.

Respectfully submitted,

### HARTLINE BARGER LLP

/s/Darrell L. Barger

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### **AND**

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### **Certificate of Service**

The undersigned certifies that on June 17, 2019, Defendant Fluor Government Group International, Inc. served a true and correct copy of the foregoing document on all known counsel of record under the Texas Rules of Civil Procedure.

### Via E-Service

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Darrell L. Barger

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DISTRICT CLERK
Kellie Juricek

### No. DC19-06872

Charlotte Loquasto, et al.,	§	IN THE DISTRICT COURT
	§	
Plaintiffs,	§	
V.	§	
	§	
Fluor Corporation, Inc., Fluor Enterprises, Inc.,	§	DALLAS COUNTY, TEXAS
Fluor Government Group, Inc., Fluor	§	
Intercontinental, Inc., and Alliance Project	§	
Services, Inc.,	§	
	§	
Defendants.	§	A-14 JUDICIAL DISTRICT

# FLUOR CORPORATION, INC., FLUOR ENTERPRISES, INC., AND FLUOR INTERCONTINENTAL, INC.'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE MOYÉ:

Defendant FLUOR CORPORATION, INC., FLUOR ENTERPRISES, INC., and FLUOR INTERCONTINENTAL, INC. (collectively, "Fluor") file this Original Answer to Plaintiffs' Original Petition, respectfully showing this Court the following:

### **GENERAL DENIAL**

1. Under Rule 92 of the Texas Rules of Civil Procedure, Fluor generally denies all material allegations contained within Plaintiffs' Original Petition, as well as any amendments or supplements thereto.

### AFFIRMATIVE OR ADDITIONAL DEFENSES

2. This Court lacks subject matter jurisdiction because Plaintiffs' claims raise nonjusticiable political questions under *Baker v. Carr*, 369 U.S. 186 (1962), and its progeny. Plaintiffs' suit questions the reasonableness of force protection and security at a United States Military base in an active conflict zone. Such military matters raise quintessential political questions. *See Taylor v. Kellogg Brown & Root Serv., Inc.*, 658 F.3d 402, 411-12 (4th Cir. 2011),

Smith v. Halliburton Co., No. H-06-0462, 2006 WL 2521326 (S.D. Tex. Aug. 30, 2006), and Am. K-9 Detection Servs., Inc. v. Freeman, 556 S.W.3d 246 (Tex. 2018).

- 3. The political question doctrine bars Plaintiffs' claims because the Military exercised plenary control over Fluor's alleged conduct at issue. "When a contractor operates under the military's plenary control, the contractor's decisions may be considered de facto military decisions." *Freeman*, 556 S.W.3d at 255 (citing *Carmichael v. Kellogg, Brown & Root Servs., Inc.*, 572 F.3d 1271, 1276-77 (11th Cir. 2009)).
- 4. Even assuming *arguendo* that Fluor shared responsibilities regarding the base security or force protection matters at issue—though Fluor did not do so—Plaintiffs' suit implicates sensitive Military decisions and judgments because Fluor was invariably "operating pursuant to the military's orders, instructions, and regulations." *Smith*, 2006 WL 2521326, at \*5. When a plaintiff claims that a contractor performed paradigmatic military functions like force protection or base security, his or her suit will raise "the same political questions." *See id.* at \*5 (quoting *Whitaker v. Kellogg, Brown & Root, Inc.*, 444 F. Supp. 2d 1277, 1281 (M.D. Ga. 2006)). "[T]he use of [] civilian contractors to accomplish [a] military objective does not lessen the deference due to the political branches in this area." *Whitaker*, 444 F. Supp. 2d at 1281.
- 5. Plaintiffs' suit—both on its face and in substance—raises political questions because it implicates the reasonableness of Military decisions and judgments that directly "contribut[ed] to causation." *Freeman*, 556 S.W.3d at 255 (quoting *Lane v. Halliburton*, 529 F.3d 548, 561 (5th Cir. 2008)). Where the Military's acts or omissions contribute to causation, a "political question will loom large." *Id*.
- 6. Absent explosive material, there could be no bombing. The Military's negligent failure to prevent the suicide bomber, Ahmed Nayeb ("Nayeb"), from bringing explosive

material into BAF was the sole proximate cause of the incident in question, or alternatively, a superseding, intervening, and/or new and independent cause of the incident.

- 7. Fluor's causation defenses will "pose political questions [because] the court must disentangle the military's and the contractor's respective causal roles." *Freeman*, 556 S.W.3d at 255. Doing so will require the Court to question the reasonableness of Military decisions and judgments. *See id.* at 255-57.
- 8. Fluor invokes all rights, privileges, protections, and immunities under Chapters 32 and 33 of the Texas Civil Practice and Remedies Code. Fluor's invocation includes *inter alia* comparative responsibility; contributory negligence; and apportionment of responsibility to parties designated as responsible third parties under § 33.004. *See* Tex. Civ. Prac. & Rem. Code § 33.001 *et seq*.
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- 10. Because Nayeb managed to enter the base with explosives, "the court would [] have to examine base perimeter security," as well as screening measures, security badge issuance protocols, and escort procedures. *Smith*, 2006 WL 2521326, at \*6. Perimeter security at a United States Military base is textually committed to coordinate branches of the Government. *Cafeteria and Restaurant Union, Local 473, AFL-CIO v. McElroy*, 367 U.S. 886, 890 (1961). The Military is in fact solely responsible for these—and all other—base security/force protection measures

even in the absence of LOGCAP directives. *Smith*, 2006 WL 2521326, at \*3 (citing DoD Instruction 2000.16, Enclosure 3, at § E3.1.1.14.1 (June 14, 2001), and Army Field Manual 100-21 (Contractors on the Battlefield), at § 6-3 (Jan. 2003)).

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- 12. That Military action was part and parcel of the Military's larger "Afghan First" strategy to counter the Afghan insurgency. Through mandating the employment of Afghans and developing the Afghan economy, the Military believed that it would effectively "reduc[e] the pool of frustrated, unemployed men and women from which insurgents can readily recruit." *See* U.S. Government Counterinsurgency Guide, at p. 3 (Jan. 2009). "In times of turmoil, political, social, security, and economic benefits can often entice people to support one side or the other." *See* Army Field Manual 3-24 (Counterinsurgency), at 1-9, § 1-42 (Dec. 2006).
- 13. The Afghan First program was a direct outgrowth of these Military strategies, judgments, and beliefs that were at the heart of the Military's larger strategy to prevail in an asymmetric war in Afghanistan. Thus, Nayeb's employment and presence at BAF pursuant to the Afghan First program was a direct result of strategic and sensitive Military decisions and judgments.

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<sup>&</sup>lt;sup>1</sup> Fluor was not aware before the bombing that Nayeb had previous ties to the Taliban because the Military did not share that information with Fluor.

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  - The Military's "Task Force Red Bulls" decided that, pursuant Afghan First, sponsoring Nayeb for training and LOGCAP employment would further the Military's counterinsurgency ("COIN") strategies.
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Military negligently failed to detect and report Nayeb's apparent re-radicalization. The Military negligently failed to prevent Nayeb from bringing explosive material into BAF.

- 16. Each of these nonexclusive acts and/or omissions constituted negligence that proximately caused the subject incident and injuries. The Military's negligence will bar Plaintiffs' claims in whole, or alternatively, in part, under §§ 33.003 and 33.013 of the Texas Civil Practice and Remedies Code.
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- 18. Deciding these issues would require the fact-finder to adjudicate the reasonableness of Military strategy and judgments in an active conflict zone. This Court cannot review such subject matter because it impermissibly concerns "how the executive, or executive officers, perform duties in which they have discretion." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 170, 177 (1803).
- 19. Fluor further asserts that this Court lacks subject matter jurisdiction in regard to the claims of the families of Peter Provost and Jarrold Reeves, as these claims are subject to the exclusive remedy provisions of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 905, as extended by the Defense Base Act, 42 U.S.C. §§ 1651-1654.

- 20. Pleading further, the state secrets doctrine bars Plaintiffs' claims in their entirety. On its face, the case *sub judice* concerns matters with respect to which the Government will assert the state secrets privilege. "[I]f military secrets are 'so central to the subject matter of the litigation that any attempt to proceed will threaten disclosure of the privilege,' dismissal of the case is appropriate." *Zuckerbraun v. Gen. Dynamics Corp.*, 755 F. Supp. 1134, 1138 (D. Conn. 1990), *aff'd* 935 F.2d 544 (2d Cir. 1991) (quoting *Fitzgerald v. Penthouse Internat'l, Ltd.*, 776 F.2d 1236, 1241-42 (4th Cir. 1985)). Such is the case on these facts.
- 21. Fluor maintains that no court may exercise subject matter jurisdiction over this case because Plaintiffs' suit raises nonjusticiable political questions. *See* pp. 1-6, ¶¶ 1-18. However, in the unlikely event that the Court does not dismiss this case on political question grounds, the Government's invocation of state secrets privilege with respect to matters central to the determination of this action will so hamper Fluor's defense "that the trier of fact is likely to reach an erroneous conclusion." *See, e.g., Zuckerbraun v. Gen. Dynamics Corp.*, 935 F.2d 544, 547 (2d Cir. 1991) (citing *Molerio v. F.B.I.*, 749 F.2d 815, 825 (D.C. Cir. 1984)). Such circumstances independently warrant dismissal under the state secrets doctrine. *See id.*

#### PROPORTIONATE RESPONSIBILITY OF UNKNOWN CRIMINAL ACTORS

- 22. Fluor collectively designates unknown criminal actors as responsible "John Does" under Texas Civil Practice and Remedies Code § 33.004(j). The unknown persons are responsible third parties because they committed criminal acts that caused "the loss or injury that is the subject of [Plaintiffs'] lawsuit." *See* Tex. Civ. Prac. & Rem. Code § 33.004(j).
- 23. Major General Thomas S. James, Jr., U.S. Army, issued a "Report of Investigation" under Army Regulation ("AR") 15-6 with regard to the incident at issue in this case. Plaintiffs rely on Major General James' AR 15-6 Report in making their alleged liability

claims against Fluor in this case. *Compare* Plaintiffs' Petition *with* Ex. 1 (AR 15-6 Report), *supra*.

- 24. The Government fashioned the AR 15-6 Report to suit is own interests and purposes and released only a heavily redacted version of the Report. Even the redacted version of the AR 15-6 Report released by the Government confirms that the suicide bombing was perpetrated not by Nayeb acting alone, but by Nayeb acting with unnamed co-conspirators.
- 25. The text of the AR 15-6 Report states that "no evidence suggests other Bagram Airfield Local National[s], including Nayeb's cousins, were coconspirators." *See* Ex. 1 (AR 15-6 Report), at p. 7 (para. 11.a(2)). At the same time, the exhibits to the Report also make clear that there were "co-conspirators to the suicide bomber," including *inter alia* a sworn statement by an officer of the Army's Criminal Investigation Division ("CID"). *See* Ex. 1 (AR 15-6 Report) at Exhibit 2A.
- 27. The Army CID officer averred under oath that he had "classified exhibits in [his] investigation produced from other military agencies who *identified co-conspirators to the suicide bomber*." *Id.* (emphasis added). He goes on—"[a]t this time, CID does not plan on listing the co-conspirators as subjects in the unclassified LER [Law-Enforcement Report] due to the classified means in which they were identified as subjects/co-conspirators." *Id.*
- 28. Other 15-6 interviewees averred that they have actual knowledge of "facilitation" that directly compromised Military-directed security measures and protocols in place at the time of the incident. For example, Afghan nationals were smuggling goods to trade for favors like "look[ing] away." *See* Ex. 1 (AR 15-6 Report), Exhibit 2J, at 3; and Exhibit 3O, at 7. The redacted report does not identify any persons that accepted payment for "look[ing] away," but it

does assert that Nayeb was able to smuggle explosive material into BAF through one or more of BAF's ECPs during a four-month period.

- 29. According to a press report, "[t]he Afghan Taliban claimed responsibility soon after the bombing, saying the assailant was one of their fighters and that *they* had been planning it for four months," referring to unnamed Taliban co-conspirators. Harooni & Shams, *Intelligence gaps may have helped Afghan Taliban breach NATO fortress*, Reuters Nov. 23, 2016, <a href="https://www.reuters.com/article/us-afghanistan-usa-bomber-insight/intelligence-gaps-may-have-helped-afghan-taliban-breach-nato-fortress-idUSKBN13I2NN">https://www.reuters.com/article/us-afghanistan-usa-bomber-insight/intelligence-gaps-may-have-helped-afghan-taliban-breach-nato-fortress-idUSKBN13I2NN</a> (emphasis added).
- 30. Fluor collectively designates as "John Does" all persons that assisted Nayeb; conspired with Nayeb; or facilitated Nayeb's suicide bombing attack at BAF, whether they worked at BAF or remained off base, whether such assistance occurred before or during the course of Nayeb's attack. *See* Tex. Civ. Prac. & Rem. Code § 33.004(j). Section 33.004(j) authorizes Fluor's designation of the John Does as responsible third parties because the John Does committed criminal acts that caused the losses and/or injuries that are the subject of this suit. *Id*.
- 31. It is beyond dispute that Nayeb's suicide attack constituted criminal behavior. Nayeb intentionally, knowingly, recklessly, and/or negligently caused the deaths of multiple persons. *See* Tex. Penal Code §§ 19.02(b) (Murder), 19.04 (Manslaughter), and 19.05 (Criminally Negligent Homicide). Nayeb intentionally, knowingly, or recklessly caused serious bodily injury to multiple persons through use of a deadly weapon. *See* Tex. Penal Code §§ 22.01(a)(1) (Assault) and 22.02(a)(1), (2) (Aggravated Assault). Nayeb recklessly engaged in conduct that placed others in imminent danger of serious bodily injury. *See* Tex. Penal Code § 22.05 (Deadly Conduct).

- 32. Under Texas Penal Code § 15.02, the John Does committed criminal acts by—(1) agreeing with Nayeb and/or one or more other persons that Nayeb would conduct the suicide attack in question, and (2) performing one or more overt acts in pursuance of their agreement and Nayeb's suicide attack. *See* Tex. Penal Code § 15.02(a)(1), (2) (Criminal Conspiracy).
- 33. Nayeb was a low-skilled laborer in the HAZMAT area of BAF's Non-Tactical Vehicle ("NTV") yard. He had access to benign, non-explosive substances pursuant to Military directives. His only formal education or vocational training consisted of training at BAF's Parwan vocation school. The Parwan vocational training school did not teach or instruct its attendees how to make or construct explosive devices such as that which Nayeb used in his attack.
- 34. On information and belief, Fluor asserts that one or more of the John Does "perform[ed] an overt act" in furtherance of Nayeb's suicide attack by constructing—or assisting Nayeb in the construction of—his suicide vest. *See* Tex. Penal Code § 15.02(a)(1), (2) (Criminal Conspiracy). Such criminal activity proximately caused the harm for which Plaintiffs seek recovery.
- 35. Military and Coalition Security Task Forces in charge of the BAF Ground Area Defense ("BAF GAD") were responsible for ensuring that personnel at ECPs performed physical security inspections on any personnel or vehicles entering or exiting BAF. Fluor had no input into the means, methods, or details of such physical searches of Nayeb or other Afghan Nationals entering or exiting BAF. Fluor also did not have input or control over the Military's random searches or counterintelligence screenings of Nayeb. The Military—not Fluor—was responsible for ensuring that responsible personnel properly conducted all such searches.

- 36. Fluor asserts that one or more of the John Does facilitated and furthered Nayeb's suicide attack by "look[ing] away" and allowing Nayeb to smuggle explosive material through one or more BAF ECPs. *See* Ex. 1 (AR 15-6 Report), at 49 (para. 18.b(2)), Exhibit 2J (p. 3); and Exhibit 3O (p. 7). Further, on information and belief, one or more of the John Does furnished and/or accepted bribes, kickbacks, or payoffs to ensure that persons responsible for searching Nayeb "look[ed] away" and allowed Nayeb to smuggle explosive material into BAF. *See id.* Such activity in furtherance of Nayeb's suicide attack was criminal in nature and proximately caused the harm for which Plaintiffs seek recovery. *See* Tex. Penal Code § 15.02(a)(1), (2) (Criminal Conspiracy).
- 37. On the morning of the incident, Nayeb was supposed to take a transport bus or a "Tata" vehicle with other Afghan Nationals to depart BAF via ECP-1. Per the Military's Base Access Policy, three Military-trained escorts with yellow, Military-issued access badges were permitted to transport Nayeb and other Afghan nationals to ECP-1. Despite these Military-provided safety protocols and measures, the Military alleges that Nayeb evaded the escorts and walked from the NTV to the bombing site.
- 38. On information and belief, Fluor asserts that one or more of the John Does—including *inter alia* one or more of the John Does on BAF premises—acted as Nayeb's accomplice and facilitated and/or assisted Nayeb in evading escort on the morning of the incident. On information and belief, Fluor further asserts that one or more of the John Does facilitated and/or assisted Nayeb in traveling from the NTV yard to the site of the bombing.
- 39. Again, such activity—(1) furthered Nayeb's suicide attack, (2) constituted criminal activity, and (3) proximately caused the harm for which Plaintiffs seek recovery. *See*

Tex. Penal Code § 15.02(a)(1), (2) (Criminal Conspiracy), and Tex. Civ. Prac. & Rem. Code § 33.004(j).

- 40. At this time, and on information and belief, the following is the only identifying characteristic of the John Does of which Fluor is aware—the John Does are members of or associated with the Taliban. The Government's heavy redaction of the AR 15-6 report—and the classified nature of information supporting the AR 15-6 report—prevent Fluor from providing any other identifying characteristics of one or more of the John Does.
- 41. Fluor's designation meets the requirements that the Legislature prescribed under § 33.004(j). Fluor "has pleaded facts sufficient for the court to determine that there is a reasonable probability that the act[s] of the unknown person[s] w[ere] criminal." *See* Tex. Civ. Prac. & Rem. Code § 33.004(j)(1). Fluor has stated in this Answer "all identifying characteristics of the unknown person[s], known at the time of th[is] answer." *Id.* at § 33.004(j)(2). Fluor's pleadings and allegations satisfy the fair notice pleading requirements of the Texas Rules of Civil Procedure. *Id.* at § 33.004(j)(3); *see also* Tex. R. Civ. P. 47, and *In re CVR Energy, Inc.*, 500 S.W.3d 67, 80 (Tex. App.—Houston [1st Dist.] 2016, orig. proceeding) ("The applicable Rule of Civil Procedure is Rule 47, which is our 'notice' pleading rule.").
- 42. Fluor's designation is also timely. Under § 33.004(j), the defendant must designate unknown criminal actors "not later than 60 days after the filing of the defendant's original answer." Fluor files this Amended Answer and § 33.004(j) designation within seven days of its June 10, 2019 Original Answer.
- 43. Accordingly, under § 33.004(j), "the court shall grant" a motion for leave to designate the John Does (collectively) as responsible third parties.

#### **PRAYER**

THEREFORE, Defendant FLUOR CORPORATION, INC., FLUOR ENTERPRISES, INC., and FLUOR INTERCONTINENTAL, INC. respectfully request that Plaintiffs take nothing by way of their suit, and that Fluor have judgment for costs of suit, general relief, and such other and further relief to which it may show itself entitled in law or in equity.

Respectfully submitted,

#### HARTLINE BARGER LLP

/s/Darrell L. Barger

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#### **AND**

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Counsel for Fluor Corporation, Inc., Fluor Enterprises, Inc., and Fluor Intercontinental, Inc.

#### **Certificate of Service**

The undersigned certifies that on June 17, 2019, Defendant Fluor Government Group International, Inc. served a true and correct copy of the foregoing document on all known counsel of record under the Texas Rules of Civil Procedure.

## Via E-Service

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/s/Darrell L. Barger
Darrell L. Barger

DALLAS COUNTY
6/18/2019 9:00 AM
FELICIA PITRE
DISTRICT CLERK
Kellie Juricek

#### No. DC19-06872

Charlotte Loquasto, et al.,	§	IN THE DISTRICT COURT
	§	
Plaintiffs,	§	
v.	§	
	§	
Fluor Corporation, Inc., Fluor Enterprises, Inc.,	§	DALLAS COUNTY, TEXAS
Fluor Government Group, Inc., Fluor	§	
Intercontinental, Inc., and Alliance Project	§	
Services, Inc.,	§	
	§	
Defendants.	§	A-14 JUDICIAL DISTRICT

# FLUOR CORPORATION, INC., FLUOR ENTERPRISES, INC., FLUOR INTERCONTINENTAL, INC., AND FLUOR GOVERNMENT GROUP INTERNATIONAL, INC.'S SUPPLEMENT TO THEIR ORIGINAL AND FIRST AMENDED ANSWERS

## TO THE HONORABLE JUDGE MOYÉ:

Defendants FLUOR CORPORATION, INC., FLUOR ENTERPRISES, INC., FLUOR INTERCONTINENTAL, INC., and FLUOR GOVERNMENT GROUP INTERNATIONAL, INC. (collectively, "Fluor Defendants") file this Supplement to their Original and First Amended Answers in the above-styled cause, respectfully showing this Court the following:

- 1. On June 17, 2019, the Fluor Defendants made the following filings—(1) Fluor Government Group International, Inc. filed a First Amended Answer; and (2) Fluor Corporation, Inc., Fluor Enterprises, Inc., and Fluor Intercontinental, Inc. filed an Original Answer.
- 2. In both Answers, the Fluor Defendants asserted the responsibility of unknown criminal actors under Texas Civil Practice and Remedies Code § 33.004(j). Although no affirmative evidence is necessary to make such designations, the Fluor Defendants designated the United States Army's AR 15-6 Report—with certain exhibits—as Exhibit 1 to their respective Answers.

- 3. The Fluor Defendants inadvertently omitted Exhibit 1 when they filed their Answers on June 17, 2019. Thus, the Fluor Defendants file this Supplement to those Answers, including the inadvertently omitted Exhibit 1.
- 4. The Fluor Defendants hereby supplement for all relevant purposes—(1) Fluor Government Group International, Inc.'s First Amended Answer, and (2) Fluor Corporation, Inc., Fluor Enterprises, Inc., and Fluor Intercontinental, Inc.'s Original Answer.

Respectfully submitted,

#### HARTLINE BARGER LLP

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#### **Certificate of Service**

The undersigned certifies that on June 18, 2019, Defendants served a true and correct copy of the foregoing document on all known counsel of record under the Texas Rules of Civil Procedure.

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Darrell L. Barger

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AR 15-6 Memo Final Signed

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#### SECRET//NOFORN



#### DEPARTMENT OF THE ARMY HEADQUARTERS, 7TH INFANTRY DIVISION BOX 339500, MAIL STOP 59 JOINT BASE LEWIS-MCCHORD, WA 98433-9500

AFZC-CG 31 December 2016

MEMORANDUM FOR Commander, United States Forces – Afghanistan, Kabul, Afghanistan, APO, AE 09356

SUBJECT: Army Regulation 15-6 Investigation on the 12 November 2016 Attack on Bagram Airfield, Afghanistan

- 1. (U//FOUO) The purpose of this memorandum and its enclosures is to enumerate relevant facts, findings, and recommendations pertaining to the circumstances and events surrounding the suicide vest attack that occurred on Bagram Airfield on 12 November 2016. Based upon the appointment orders dated 25 November 2016, the undersigned and nine other personnel from 7th Infantry Division deployed to Afghanistan and with the addition of two in-country personnel with theater expertise in force protection and contracting conducted an administrative investigation from 07 December 2016 to 30 December 2016 in accordance with Chapter 5 of Army Regulation 15-6. The scope of the investigation included six formal site visits and 53 formal interviews reduced to sworn statements utilizing Department of the Army Form 2823, among other informal inquiries and background research, to weigh considerations pertinent to force protection, intelligence, contracting, and combat operations.
- 2. (U//FOUO) The suicide attack on Bagram Airfield on 12 November 2016 resulted in the death of six personnel three U.S. Soldiers, two civilian Fluor employees, and the suicide bomber (a Fluor subcontractor employee) and the wounding of sixteen U.S. Army Soldiers and one Polish Soldier. At 0538 hours, several hundred personnel residing on the base were preparing for a Veteran's Day five kilometer run, many of them already assembling in the vicinity of the landmark known as the "Disney Clamshell" on Disney Avenue for a 0615 hours start time. The explosion, initiated by a local national employed on the base for over five years and that passed a counterintelligence screening earlier this year, occurred approximately 300 meters southwest of the start point and less than 300 meters northeast of the base headquarters. Though the ultimate target for the attack remains indeterminable, the group of Soldiers and Fluor employees unwittingly induced the assailant to detonate his suicide vest, likely preventing a far greater tragedy at the Disney Clamshell.
- 3. (U//FOUO) Close to 2,000 personnel secure Bagram Airfield, the largest international military base in Afghanistan. Though upwards of 15,000 personnel operate from this base many of them armed as well the majority of occupants contribute to Base Life Support and sustainment operations or enable operations beyond the Bagram Ground Defense Area. The 1st Cavalry Division Commander, who also serves as 1) the Deputy Commanding General (Support) for United States Forces-Afghanistan, 2) the Commander of the United States National Security Element, 3) the Commander of Bagram Airfield, and 4) the Commander of Joint Task Force 1, has both local and theater-wide responsibilities. While his staff oversees Bagram Airfield

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**USARCENT FOIA FA-17-0184** 

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**AFZC-CG** 

SUBJECT: Army Regulation 15-6 Investigation on the 12 November 2016 Attack on Bagram Airfield, Afghanistan

security, the day-to-day security inside and outside of the Bagram Ground Defense Area is principally orchestrated by 1st Squadron, 3rd Cavalry Regiment's "Task Force Tiger." Also under the Commander of Bagram Airfield, the Area Support Group – which has responsibility for base life support on Bagram Airfield and six other major Forward Operating Bases throughout Afghanistan – manages the installation's emergency services.

- 4. (U//FOUO) The leadership at Bagram Airfield orchestrates an assortment of multinational security providers and dozens of military units and contracted agencies that operate on the installation. Initiatives that began at Bagram Airfield prior to the 12 November 2016 attack and accelerated thereafter have already mitigated many of the force protection gaps and seams that enabled the assailant to conduct the attack. Yet, the inherent risks associated with operating in the midst of force protection threats coupled with evolving capabilities remains, requiring further analysis and the inculcation of lessons learned from this particular attack.
- 5. (U//FOUO) Beyond pursuing understanding of the contributing conditions that enabled the attack, the scope of this investigation includes analysis on the actions taken by the chain of command to prevent future attacks. The responses that follow answer the specific questions within the appointment memorandum to present facts and commensurate findings and recommendations pertinent to security operations at Bagram Airfield. Specifically, they highlight the presence or absence of 1) published standards, 2) the resources and individual and collective training required, and 3) the engaged and disciplined leadership empowered to attain those standards. Inspired by the sacrifice of those lost or forever impacted by the attack on 12 November 2016, this investigation seeks to provide value to the ongoing efforts in Afghanistan, with hopes that it can contribute to the understanding required to keep Service member and civilians as safe as possible.
- 6. (U//FOUO) The investigation determined that the primary contributing factor to the 12 November 2016 attack was Fluor's complacency and its lack of reasonable supervision of its personnel. These conditions enabled the suicide bomber to construct and employ a suicide vest inside the Bagram Airfield perimeter.
- 7. (U//<del>FOUO</del>) There are eight major findings within the investigation that enabled the primary contributing factor to present risk that was not sufficiently mitigated before the attack:
  - a. (U//<del>FOUO</del>) Local National access and supervision was not properly enforced;
- b. (U//<del>FOUO</del>) Unity of effort, unity of command, and interoperability challenges were compounded by multi-national and contracted security providers;
- c. (U//<del>FOUO</del>) The Bagram Airfield security forces' span of control is too broad and lacks adequate forces;

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**AFZC-CG** 

SUBJECT: Army Regulation 15-6 Investigation on the 12 November 2016 Attack on Bagram Airfield, Afghanistan

- d. (U//<del>FOUO</del>) Counterintelligence shortages impaired Coalition Forces' capability to screen Local National employees and to identify Nayeb's threat indicators;
- e. (U//<del>FOUO</del>) Complexity of intelligence and force protection mission command and interoperability of networks, architecture, and analytical tools impaired intelligence fusion;
- f. (U//F<del>OUO</del>) Disjointed antiterrorism and force protection efforts increased susceptibility to attacks;
- g. (U//<del>FOUO</del>) Contracting Officer's Representatives were not aligned by location, duties, or experience; and
- h. (U//<del>FOUO</del>) Commanders and supervisors of Contracting Officer's Representatives were not appropriately engaged in contract formation, administration, and oversight.
- 8. (U//<del>FOUO</del>) Based upon these key findings, the below recommendations may best apply lessons learned from the 12 November 2016 attack to neutralize future force protection threats:

(b)(5)

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**AFZC-CG** 

SUBJECT: Army Regulation 15-6 Investigation on the 12 November 2016 Attack on Bagram Airfield, Afghanistan

(b)(5)

9. (U//FOUO) In summary, the investigation finds that the current leadership at Bagram Airfield, has pushed since assuming command on 13 September 2016 to reverse a pervasive "culture of complacency" and indiscipline – specifically within the civilian portions of the base – that permeated the forward operating base. Addressing the key findings delineated above consistent with the corresponding key recommendations will prevent another local national subcontractor employee - with poorly vetted access and unreasonable supervision - from operating with impunity and conducting a similar attack on Bagram Airfield.

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AFZC-CG

SUBJECT: Army Regulation 15-6 Investigation on the 12 November 2016 Attack on Bagram Airfield, Afghanistan

- 10. (S//NF) (8a) Identify the names, ages, country of origin, and status/employer of those killed in action (KIA) and wounded in action (WIA) from the 12 November 2016 incident.
- a. (S//NF) Identify the names, ages, country of origin, and status/employer of those killed in action (KIA).
- (1) (U//<del>FOUO</del>) Sergeant First Class Brown, Allan Eric; 46 years old; Headquarters and Headquarters Company, 1st Cavalry Division Sustainment Brigade; U.S. Army
- (2) (U//<del>FOUO)</del> Staff Sergeant Perry, John William; 30 years old; Headquarters and Headquarters Company, 1st Cavalry Division Sustainment Brigade; U.S. Army
- (3) (U//FOUO) Private First Class Iubelt, Tyler Ray; 20 years old; Headquarters and Headquarters Company, 1st Cavalry Division Sustainment Brigade; U.S. Army
- (4) (U//<del>FOUO</del>) (b)(6) U.S. Fluor Government Group International, Inc.
- (5) (U//FOUO) (b)(6) U.S. Fluor Government Group International, Inc.
- b. (S//NF) Identify the names, ages, country of origin, and status/employer of those wounded in action (WIA).
- (1) (U// $\overline{FOUO}$ ) (b)(3), (b)(6) Headquarters and Headquarters Company, 1st Cavalry Division Sustainment Brigade; U.S. Army
- (2) (U//<del>FOUO</del>) (b)(3), (b)(6) Headquarters and Headquarters Battalion, 1st Cavalry Division; U.S. Army
- (3) (U//<del>FOUO</del>) (b)(3), (b)(6) 412th

Contracting Support Brigade; U.S. Army

- (4) (U//FOUO) (b)(3), (b)(6) Headquarters and Headquarters Battalion, 1st Cavalry Division; U.S. Army
- (5) (U//<del>FOUO)</del> (b)(3), (b)(6) years old; Headquarters and Headquarters Company, 1st Cavalry Division Sustainment Brigade; U.S. Army

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**AFZC-CG** 

SUBJECT: Army Regulation 15-6 Investigation on the 12 November 2016 Attack on Bagram Airfield, Afghanistan

(6) (U/<del>/FOUO</del>) (b)(3), (b)(6) 36 years old;

Headquarters and Headquarters Battalion, 1st Cavalry Division; U.S. Army

(7) (U//<del>FOUO</del>) (b)(3), (b)(6) Detachment 19, 3rd

Medical Command Deployment Support; U.S. Army Reserve

(8) (U//FOUO) (b)(3), (b)(6) Headquarters and

Headquarters Company, 1st Cavalry Division Sustainment Brigade; U.S. Army

(9) (U//<del>FOUO)</del> (b)(3), (b)(6) 607th Contracting Team;

412th Contracting Support Brigade; U.S. Army

(10) (U//<del>FOUO</del>) (b)(3), (b)(6) 901st Contracting

Battalion; 418th Contracting Support Brigade; U.S. Army

(11) (U//<del>FOUO</del>) (b)(3), (b)(6) Headquarters and

Headquarters Company, 1st Cavalry Division Sustainment Brigade; U.S. Army

(12) (U//<del>FOUO)</del> (b)(3), (b)(6) Headquarters and

Headquarters Company, 1st Cavalry Division Sustainment Brigade; U.S. Army

(13) (U//FOUO) (b)(3), (b)(6) Headquarters and

Headquarters Company, 1st Cavalry Division Sustainment Brigade; U.S. Army

(14) (U//<del>FOUO</del>) (b)(3), (b)(6) Headquarters and

Headquarters Company, 1st Cavalry Division Sustainment Brigade; U.S. Army

(15) (U//FOUO) (b)(3), (b)(6) Headquarters and

Headquarters Company, 1st Cavalry Division Sustainment Brigade; U.S. Army

(16)  $(U/\overline{FOUO})$  (b)(3). (b)(6) Headquarters and

Headquarters Company, 1st Cavalry Division Sustainment Brigade; U.S. Army

(17) (U//FOUO) (b)(3), (b)(6) Headquarters and

Headquarters Company, 1st Cavalry Division Sustainment Brigade; U.S. Army

 $(18) \left( U // FOUO \right) \tag{b)(6)}$ 

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**AFZC-CG** 

SUBJECT: Army Regulation 15-6 Investigation on the 12 November 2016 Attack on Bagram Airfield, Afghanistan

- c. (U//<del>FOUO</del>) Line of duty actions are complete and all service members were found in the line of duty (Exhibits 1E, 1F).
- 11. (S//NF) (8b) Identify any/all Local Nationals (LNs) involved in the incident. Were any LNs connected to the Taliban or any other group(s)? Is so, describe the connection.
  - a. (S//NF) Identify any/all Local Nationals (LNs) involved in the incident.
- (1) (U//<del>FOUO</del>) The only evidence of Local National involvement in the incident concerns the suicide bomber, Ahmad Nayeb (variant: Qari Nayab, Ahmad Naib Hafzi, Hafezi Nieb, Abdul Zuhoor), herein referred to as Nayeb, matched using DNA evidence (Exhibits 2Q, 3P, 4P, 4W, and 4AO).
- (2) (U//FOUO) At this time, no evidence suggests other Bagram Airfield Local National, including Nayeb's cousins, were co-conspirators. Nayeb had familial ties to three cousins who worked on base (Exhibits 2Q, 4AF, 4CV, and 5A). (b)(6) was a cousin of Nayeb and was employed on Bagram Airfield as a day shift worker at the Morale, Welfare, and Recreation Center (Exhibits 4AA, 4AF, 4CV, and 5A). (b)(6) was a cousin of Nayeb and was employed on Bagram Airfield as a night shift worker at the Warrior Gym (Exhibits 4AA, 4AF, 4CV, and 5B at 16). (b)(6) was a cousin of Nayeb and was employed on Bagram Airfield as a Dining Facility worker (Exhibits 4AA, 4AF, 4CV, and 5A).

(3) (S/NF) (b)(1)1.4d

(b)(1)1.4d

(b)(1)1.4d

(Exhibits 4CJ, 4BY, 4AK, and

4AL).

b. (S//NF) Were any LNs connected to the Taliban or any other group(s)? Is so, describe the connection.

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(1) (<del>S//NF)</del>

(b)(1)1.4c

(b)(1)1.4c

(b)(1)1.4c

(Exhibits 4BW, 4BZ, 4CA, 4CC,

4CD, 4CG, 4CH, 4CQ, 4CM, 4CR, and 4CV).

(2) (<del>S//NF)</del>

(b)(1)1.4c

(b)(1)1.4c

12. (S//NF) (8c) Describe the Local Nationals' connection(s) to any US/Coalition Forces (CF). Were they employed on Bagram Airfield? If so, by whom and for what position? When were they hired? What were the work days/hours of the involved Local Nationals on Bagram Airfield? Were the Local Nationals hired and supervised by Fluor Corporation or a subcontractor? Were there any failings by Fluor Corporation or another company in the hiring or continued employment of the Local Nationals involved in this incident? You will make recommendations as appropriate given your findings, on the hiring and supervision of Local Nationals by Fluor Corporation or involved companies.

a. <del>(S//NF)</del> (<del>S//NF</del>) (b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

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- b. (S//NF) Were they employed on Bagram Airfield? If so, by whom and for what position? When were they hired? What were the work days/hours of the involved Local Nationals on Bagram Airfield?
- (1) (U//FOUO) Nayeb was employed by Alliance Project Services, Inc. (APS), a subcontractor to Fluor, on Bagram Airfield in the Non-Tactical Vehicle Yard. At the time of the bombing, he was working the 1800-0600 shift and was responsible for managing the hazardous material in the HAZMAT section of the Non-Tactical Vehicle Yard, which Fluor supervises (Exhibits 5D at 8, 5D at 2).
- (2) (U//<del>FOUO</del>) On 01 April 2011, Nayeb entered the Provincial Reconstruction Team Parwan (Republic Of Korea) Vocational Training Center on Bagram Airfield as a construction trainee (Exhibit 5H). Nayeb was a transitioning Taliban member who went through reintegration as part of the Afghanistan Peace and Reintegration Program efforts funded by the Commander's Emergency Response Program pursuant to the FY2010 National Defense Authorization Act (Exhibits 5K at 331, 5AB). Nayeb was sponsored by Task Force Red Bulls in a memorandum dated 25 March 2011, which accompanied his request for a Bagram Airfield access badge (Exhibit 5H).

 $(3) \frac{(S//NF)}{(S/NF)}$ 

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

(Exhibits 5D, 5A, and 5H).

(4) (U//FOUO) During his five years of employment, Nayeb worked varying shifts under numerous and diverse Fluor supervisors – shift changes are not uncommon among Local National employees. His first day of work in the Fluor Non-Tactical Vehicle Yard was 11 December 2011, initially on night shift (Exhibits 5D, 5O). Nayeb briefly worked the day shift from 24 July 2012 until 14 November 2012, then changed back to the night shift (Exhibit 5O). Nayeb stayed on the night shift until 28 April 2014, then changed to day shift for almost one full year, transitioning back to night shift on 14 April 2015 (Exhibit 5O). Nayeb then worked the night shift until 05 June 2016, when he transferred to the day shift from 05 June 2016 until 06 August 2016 (Exhibit 5O). From 06 August 2016 until 12 November 2016, Nayeb worked the night shift (Exhibit 5O).

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- c. <del>(S//NF)</del> Were the Local Nationals hired and supervised by Fluor Corporation or a subcontractor?
- (1) (U//FOUO) Nayeb was hired by Alliance Project Services, Inc. a subcontractor of Fluor (Exhibits 5D, 5F, 5C). Alliance Project Services, Inc. is a U.S. veteran owned business in Alexandria, Virginia, which specializes in hiring host nation personnel in a labor broker capacity. Although Alliance Project Services, Inc. was responsible for administration of Nayeb (payroll, time and attendance, etc.), Nayeb's work performance was supervised by Fluor while he was employed at the Bagram Airfield Non-Tactical Vehicle Yard. The paragraphs below will show that Fluor did not reasonably supervise Nayeb at the work facility, nor reasonably supervise the transport of Nayeb or other employees between the Entry Control Point and the work facility.
- (2) (U//FOUO) Fluor is the prime contractor for LOGCAP IV (Task Order 005), which encompasses services and base life support for the eastern and northern portions of Afghanistan. In support of the Afghanistan First Policy a U.S. Government policy encouraging Afghan employment (Exhibit 5I) Local Nationals are hired by Fluor through a subcontract with Alliance Project Services, Inc. which specializes in labor broker services (Exhibits 5D at 6, 5C at 4, 5E para 01.07). As the prime contractor with the U.S. Government, and as the contractor with oversight of the Bagram Airfield Non-Tactical Vehicle Yard, Fluor is responsible for all of its employees, subcontractors, and subcontractor employee actions (Exhibit 5E para 01.07). Specific to the Non-Tactical Vehicle Yard, Fluor states that "site supervision was accomplished by Fluor Other Country Nationals and Fluor U.S. National supervisors and foremen in accordance with the base access control policy" (Exhibit 5D). This supervisory responsibility is also clearly stated in the Performance Work Statement, paragraphs 01.07a and 01.07b, dated 01 April 2013:
- (a) (U//FOUO) 01.07a. "[Fluor] is responsible for ensuring all personnel supporting [LOGCAP IV 005] comply with the standards of conduct, and all terms/conditions set forth in [the] PWS and the Basic Contract. [Fluor] shall provide the necessary supervision for personnel required to perform this contract" (5E para 01.07).
- (b) (U//FOUO) 01.07b. "[Fluor] shall hire HN personnel and Subcontractors to the maximum extent possible in performance of this contract when such recruitment practices meet legal requirements. [Fluor] is responsible for oversight of such personnel or Subcontractors to ensure compliance with all terms of the Basic Contract and this PWS." (5E para 01.07).
- (3) (U//<del>FOUO</del>) Interviews with employees of the Non-Tactical Vehicle Yard conducted by Counterintelligence Agents from Task Force Odin and Task Force Crimson following the suicide blast illustrate that Fluor employees (Other Country Nationals, U.S. Nationals, and

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specific Local Nationals) were responsible for the supervision of Local National employees (Exhibits 5A, 5B).

- (4) (U//FOUO) There were at least three areas where Fluor did not reasonably supervise its employees, to include Nayeb, at the Non-Tactical Vehicle Yard. The lack of reasonable supervision includes, but is not limited to: 1) lack of direct supervision over the HAZMAT area, 2) lack of supervising employee performance, and 3) failure to supervise use of tools by employees.
- (a) (U//<del>FOUO</del>) The Non-Tactical Vehicle Yard where Nayeb worked consisted of a Light Non-Tactical Vehicle work center, a Heavy Non-Tactical Vehicle work center, and a HAZMAT work center (Exhibit 5A at 67). All three areas are disassociated sites occupying a larger work area known as the Non-Tactical Vehicle Yard. Both the Heavy and Light Non-Tactical Vehicle work centers are enclosed "clamshell" tents to provide protection from the elements and are separated by approximately 75 feet (Exhibit 5A at 67). The HAZMAT work center is a row of containers placed adjacent to one another and built up with carpentry which adds a stable walking area, some overhead cover, and two work areas with minimal lighting or visibility from other work sites (Exhibit 5A at 67). The HAZMAT area is toward the south side of the Non-Tactical Vehicle Yard approximately 75 feet from the Heavy Non-Tactical Vehicle center and Light Non-Tactical Vehicle center and otherwise outside and exposed to the elements and approximately 200 feet from the Non-Tactical Vehicle Yard office (Exhibit 5A at 67).
- (b) (U/<del>FOUO</del>) As the only HAZMAT employee on night shift, Nayeb worked at the HAZMAT work center alone and with sporadic supervision (Exhibit 5B at 30-31). There was also confusion by Fluor supervisors as to who was responsible for Nayeb and the HAZMAT work center (Exhibit 5B at 29). (b)(6) was the Fluor Other Country National Heavy Non-Tactical Vehicle Lead Senior Mechanic for the night shift on 12 November 2016, and when questioned about Nayeb informed Counterintelligence personnel that he had little interaction with Nayeb and insisted that "the light vehicle maintenance bay employees were responsible for ensuring Nayeb was supervised and employed" (Exhibit 5B at 27-29). When interviewed by Counterintelligence Agents, (b)(6) recognized Nayeb as the HAZMAT worker but could not recall his name (Exhibit 5B, para 2.18).
- (c) (U//<del>FOUO</del>) When HAZMAT responsibilities were reduced, or when Non-Tactical Vehicle maintenance operations were high, Nayeb would occasionally help out in either the Heavy Non-Tactical Vehicle Yard or Light Non-Tactical Vehicle Yard as workload dictated (Exhibit 5C, page 15). (b)(3), (b)(6) was the Fluor Other Country National Light Non-Tactical Vehicle Lead Senior Mechanic for the night shift on 12 November 2016, and when questioned about Nayeb informed Counterintelligence Agents that he "was only accountable for local"

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national employees when they worked for him in the light vehicle bay" (Exhibit 5B at 27-29). Rexhep Rexhepi, the Fluor Other Country National Non-Tactical Vehicle Yard General Foreman, reported to Counterintelligence Agents that once Nayeb's work at HAZMAT was complete, he would work in the light vehicle bay (Exhibit 5B at 27-29). At a later interview, Rexhep Rexhepi stated that (b)(6) the Heavy Non-Tactical Vehicle Lead, was responsible for Nayeb.

- (d) (U//<del>FOUO</del>) The statements of Fluor employees obtained by Counterintelligence Agents, coupled with the statements provided by Fluor, reveals a poor understanding by Fluor supervisors as to who was responsible for Nayeb's supervision (Exhibits 5A, 5B at 28). This ambiguity on supervisory responsibility demonstrates an unreasonable complacency by Fluor to ensure Local National employees were properly supervised at all times, as required by their contract and non-contractual, generally recognized supervisor responsibility. This lack of reasonable supervision facilitated Nayeb's ability to freely acquire most of the components necessary for the construction of the suicide vest and the freedom of movement to complete its construction (Exhibit 1B, 5B at 28).
- (e) (U//<del>FOUO)</del> According to Alliance Project Services, Inc. Performance and Disciplinary Policy and the LOGCAP IV Afghanistan HCN Labor Support Statement of Work, sleeping while at work or unsatisfactory job performance are "cause for disciplinary action up to and including termination" (Exhibit 5F, Exhibit 5G). Fluor Other Country (b)(3), (b)(6) National Light Non-Tactical Vehicle Lead Senior Mechanic, states that he had caught Nayeb sleeping in the HAZMAT area in a sleeping bag (Exhibit 5B, pages 27-29). In addition, on separate occasions, he caught Nayeb reading the Quran during work hours (Exhibit 5B, pages 27-29). Interviews collected by Counterintelligence Agents show that Naveb was often not present at the HAZMAT area when workers would go there to drop off oils (Exhibit 5A, para 2.62). a Local National who worked in the Light Non-Tactical Vehicle Yard, stated (b)(6)that "it was normal for [Nayeb] not to be in the work area" (Exhibit 5A, para 2.65). No formal counseling or disciplinary action can be found for Nayeb despite reported instances of sleeping at work and absences without authority. This failure to enforce a work-related standard of performance and the unjustified retention of Nayeb amounts to a lack of reasonable supervision on behalf of Fluor.
- (f) (U//FOUO) Following the suicide bombing, Counterintelligence Agents collected the tool room logs from the Non-Tactical Vehicle Yard. Those logs revealed that between 10 August 2016 and 10 November 2016, Nayeb checked out multiple tools not associated with his duty as the HAZMAT employee, to include checking out a multimeter nine times for up to six hours at a time (a multimeter is a tool used to measure voltage, current, and resistance) (Exhibit 5A at 49-50, at 129-213). Fluor employees confirmed that there were no tools identified as

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restricted use, or controlled use, by force protection or base policy (Exhibit 5C). Fluor employees also provided that any employee was able to check out any tool, regardless of where that employee worked. However, interviews of Non-Tactical Vehicle Yard personnel suggest that only certain individuals could check out specific tools within the Non-Tactical Vehicle Yard (Exhibit 5A para 2.49, 2.56, 2.57, 2.62, 2.66).

- (g) (U//<del>FOUO</del>) An interview of Other Country National stated that (b)(6) "HAZMAT workers would only check out tools if one of the maintenance guys requested help" and that the HAZMAT worker would tell him the name of the mechanic that needed the tool further stated that "HAZMAT workers do not require (Exhibit 5A para 2.56). (b)(6)any tools in the performance of their job" (Exhibit 5A para 2.56). a Fluor (b)(3), (b)(6) U.S. National employee stated in an interview with Counterintelligence Agents that "he did not think it was normal for the HAZMAT worker to sign out tools" (Exhibit 5A para 2.57). Another Fluor employee, Local National stated to Counterintelligence Agents that "only the (b)(6)person who needed the tool could sign the tool in or out from the tool room" (Exhibit 5A para 2.62). A further Fluor employee, Local National stated that Nayeb "did not require (b)(6) the use of any special tools to complete his HAZMAT job" (Exhibit 5A para 2.66). Fluor Local National (b)(6)who ran the Non-Tactical Vehicle Yard tool room at night, asked Nayeb why he needed a multimeter tool during work, to which Nayeb replied that he needed it because he was fixing a radio on one occasion and hair clippers on another occasion (Exhibit 5A para 2.49). This apathy demonstrates that there was general knowledge of who was properly able to check out tools associated with job performance, but that the standard was poorly enforced. It also demonstrates Nayeb was not gainfully employed without the issue being raised to a supervisor's attention. Lastly, it illustrates a work culture of minimal supervision. This evidence supports complacency and a lack of reasonable supervision by Fluor supervisors over Nayeb and other Local Nationals at the Non-Tactical Vehicle Yard work facility that enabled Nayeb's nefarious plan.
- (h) (U//FOUO) Fluor was also deficient in their performance of executing and supervising escort duties during the transportation of employees, to include Nayeb, between the Entry Control Point and the Non-Tactical Vehicle Yard. The lack of reasonable supervision is evidenced by, but is not limited to, a 1) lack of accountability over employees getting on the bus at the end of each shift, and a 2) lack of positive control while escorting Local National employees to and from the Entry Control Point. As the contractor responsible for the Non-Tactical Vehicle Yard, Fluor is responsible to provide "transportation and supervision" necessary for its employees to accomplish their work (Exhibit 5E paras 03.03 and 05.00). This includes the supervision and transportation of Local Nationals to and from the work facility. Various Fluor Non-Tactical Vehicle Yard employees U.S. Civilians, Other Country Nationals, and Local Nationals served as escorts for Local Nationals who worked in the Non-Tactical Vehicle Yard

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(Exhibits 5B at 28, 5D at 5). These Fluor escorts were responsible for supervising the transport of Local Nationals from the Entry Control Point to the Non-Tactical Vehicle Yard, and from the Non-Tactical Vehicle Yard back to the Entry Control Point, at shift change (Exhibit 5C). The Bagram Airfield Badging and Screening Policy requires that escorts remain in close proximity and remain in constant view of the individuals they are escorting (Exhibits 2AB, 5J).

- (i) (U/<del>FOUO)</del> The mechanism Fluor used to ensure that Local National employees were on the bus at the end of each shift consisted of a sign in/sign out sheet filled out by the night shift (Exhibit 5A para 2.47). In lieu of a physical or visual Local National Team Lead, (b)(6) inspection to ensure every Local National employee was on the bus, he would attest to the same by observing that all the employees had signed out on the sheet (Exhibit 5A para 2.47). The bus would then move to the Entry Control Point without additional supervisory accountability. The Fluor U.S. National and Other Country National supervisors relied upon the Local Nationals to ensure everyone was accounted for and actually on the bus at the end of shift (Exhibit 5C at 7). On 11 November 2016, Nayeb informed (b)(6) - his Local National co-worker - that he would miss the bus on 12 November 2016 because of a HAZMAT class requirement, despite having taken the class on 02 October 2016 and not requiring the class for another year (Exhibits 5A at 3 at 215, 5D at 17) and evidence supports that Nayeb never got on the bus (Exhibits 5A at 3, 17, 27, 37 42, 43 47, 51, 55, 58, 80 and 5B at 31).
- (j) (U//FOUO) Fluor Other Country National escorts did not know who they were responsible for escorting, as evidenced by both (b)(6) an Other Country National escort on the Heavy Non-Tactical Vehicle night shift, and an Other Country (b)(6) National escort for the Light Non-Tactical Vehicle night shift, admitting that they did not know the names of those they escorted (Exhibits 5A paras 2.25 and 2.26, 5B). Two Local National and (b)(6) provided that if a night shift worker missed a ride to Entry Control Point 1 at the end of shift, a day shift escort would take them at a later time after the shift change (Exhibit 5A paras 2.52 and 2.54). (b)(6) a Local National working in the Light Non-Tactical Vehicle Yard and authorized unescorted access and escort privileges (yellow badge), provided a specific example when he shared that there were two Heavy Alliance Project Services, Inc. Local Nationals -- left behind by the and (b)(6) (b)(6) vehicle that transports Heavy Non-Tactical Vehicle Yard employees to the Entry Control Point on the morning of 12 November 2016 (Exhibit 5A para 2.45). Both men, (b)(6) and (b)(6) got on the light bus instead, unbeknownst to (Exhibit 5A para 2.45). (b)(6) both from the Fluor Non-Tactical Separate statements from (b)(6) and by (b)(6) Vehicle Yard, confirm that the Fluor Non-Tactical Vehicle Yard changed escorts out every week (Exhibit 5A para 2.47 and Exhibit 5C).

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- (k) (U//FOUO) The preponderance of evidence shows a lack of reasonable supervision by Fluor while escorting Local Nationals to and from the Non-Tactical Vehicle Yard. Fluor's systemic lack of reasonable supervision enabled Nayeb to go undetected from 0445 until 0538 on 12 November 2016, which coincides with the average walking time of 53 minutes from the Non-Tactical Vehicle Yard to the blast site (Exhibits 2Q, 4CE and Naismith's Rule).
- d. (S//NF) Were there any failings by Fluor Corporation or another company in the hiring or continued employment of the Local Nationals involved in this incident?
- (1) (U//FOUO) There were no failings by Fluor in the hiring of local nationals. Fluor complied with the Afghan First Program and the Afghan Peace and Reintegration Program in the hiring of Nayeb through a subcontracted labor broker, Alliance Project Services, Inc. (Exhibit 5D at 4). Fluor performed the Biometrics Automated Toolset Services in March 2011, when Fluor subcontractor employee, (b)(6) nput Nayeb into the database along with the Reintegration Memorandum identifying Nayeb's previous Taliban affiliation (Exhibit 5P Line 5399 of PERSTAT Tab). The Biometrics Automated Toolset Services entry form has the Fluor employee's signature for processing (Exhibit 5H).
- (2) (U//<del>FOUO)</del> There is evidence to support failings by Fluor in the continued employment of Nayeb. See previous analysis concerning Fluor's lack of supervision of employee performance and unreasonable employee retention of Nayeb. Fluor did not provide any information concerning disciplinary action taken against Nayeb. In fact, Nayeb received a promotion from Skilled Laborer II to Skilled Laborer III on 05 July 2016 after known poor performance (Exhibit 4AN).
- e. (S//NF) Make recommendations as appropriate given your findings, on the hiring and supervision of Local Nationals by Fluor Corporation or involved companies.

(b)(5)

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(b)(5)

 $(3) \left( U / / FOUO \right)$  (b)(5)

(b)(5)

(4) (b)(5)

(b)(5)

(5) (U//<del>FOUO</del>) (b)(5)

(b)(5)

(b)(5) (Exhibit

5W).

 $(6) \left( U // FOUO \right) \tag{b)(5)}$ 

(b)(5)

(7) (U//<del>FOUO)</del> (b)(5) (b)(5)

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Pages 23 through 24 redacted for the following reasons:

(b)(5)

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(b)(5)

- 13. (S//NF) (8d) Did U.S. or Coalition Forces have any intelligence of value or indicators regarding the planning and execution of this incident before it occurred? If so, what information was known and by whom? Did this incident identify any flaws in communication, tracking of individuals, situational awareness, etc., between intelligence analysis, dissemination, and those responsible for force protection on Bagram Airfield?
- a. (S//NF) Did U.S. or Coalition Forces have any intelligence of value or indicators regarding the planning and execution of this incident before it occurred?

(1) (<del>S//NF)</del>

(b)(1)1.4a

(b)(1)1.4a

(b)(1)1.4a

(Exhibits 4B and 4CP).

(2) <del>(S//NF)</del>

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c (Exhibits 4U, 4BF, 4BG, 4BH, 4BI, 4BJ, 4BK, 4BL, 4BM, 4BN, 4BO, 4BP, 4BQ, 4BS, 4BT, 4BU, and 4BX).

(3) (S//NF)

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

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-SECRET//NOFORN

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(b)(1)1.4a, (b)(1)1.4c

(Exhibits 4B, 4C, 4E, and 4F).(b)(1)1.4a

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c (Exhibits 4B, 4C, 4E, and 4F).

(4) (<del>S//NF</del>)

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

(Exhibits 4BX and 4CE).

(5) (S//NF)

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c (Exhibits 4B, 4D, 4E, 4F, 4G, 4H, 4J, 4M, and 4O). (b)(1)1.4a, (b)(1)1.4c (Exhibits 4E, 4G)

(b)(1)1.4a, (b)(1)1.4c

(Exhibits 4E, 4G, 4B, 4J and 4(6))1.4a. (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

(Exhibits 4E, 4F, 4G, and 4BV)(1)1.4a, (b)(1)1.4c

(b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c (Exhibit 4AX).

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a

(Exhibits 4B, 4E, 4G, and 4CS).

b. (S//NF) If so, what information was known and by whom?

(1) (<del>S//NF</del>)

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

(2) (<del>S//REL TO USA, FVEY</del>

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

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SECRET//NOFORN

**EXHIBIT 1** 

**USARCENT FOIA FA-17-0184** 

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(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a (Exhibits 4CB, 4CR and 4CV).

(3) (S/NF) (b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

(4) <del>(S//NF)</del>

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

to 12 November 2016:

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Pages 28 through 32 redacted for the following reasons:

(b)(1)1.4a, (b)(1)1.4c

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 $(10) (\frac{S//NF}{})$ 

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

27

(b)(5)

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(b)(5)

14. (S//NF) (8e)

(b)(1)1.4a

(b)(1)1.4a

a. (S//NF)

(b)(1)1.4a

(b)(1)1.4a

(b)(1)1.4a

(Exhibits 4Q, 4U, and 4AF).

b. <del>(S//NF</del>)

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

(Exhibits 4Q and 4AB).

c. (<del>S//NF</del>)

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

(Exhibits 4Q and 4AB).

- d. (S//NF) Did the incident highlight any issues or problems with BATS?
- (1) (U//FOUO) Yes. Issues with the Biometric Automated Toolset System included human error, technology limitations and software design, and a lack of familiarity with the system. Most issues or problems with the Biometric Automated Toolset System are a result of human error. These issues or problems can arise from a lack of training (Exhibits 4I and 4U) lack of attention to detail to ensure proper registration with the biometric system (Exhibits 4I, 4U, and 4AB), and lack of awareness of the system and its capabilities.

(a) (<del>S//NF</del>)

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

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(b)(1)1.4a, (b)(1)1.4c

(b) <del>(S//NF)</del>

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

(2) (<del>S//NF</del>-

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

(3) (<del>S//NF)</del>

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

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(b)(1)1.4a, (b)(1)1.4c

 $(4) \frac{(S//NF)}{(S/NF)}$ 

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

e. <del>(S//NF)</del> Make recommendations, as appropriate given your findings, with regard to the base's use of BATS.

(b)(5)

(2) (<del>\$//NF)</del>

(b)(1)1.4a, (b)(1)1.4c, (b)(5)

(b)(1)1.4a, (b)(1)1.4c, (b)(5)

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- (3) (U//FOUO) Commanders require the most complete view of their operational environment. Recommend base commanders review the data and information provided by Task Force Biometrics upon assumption of mission (Exhibits 4I and 4Q). Additionally, a biometrics expert assigned to the commander's staff will enable the application of all capabilities for the command and their staff responsible for force protection and base defense. Force protection, targeting, and all source analysts need to register and employ the Biometric Identity Intelligence Resource in the execution of their duties to help fill the identity intelligence gap that currently exists (Exhibit 4AD). Access to identity intelligence should not be a cumbersome process for non-intelligence analysts. Once they understand their area of operations, commanders should customize the Biometric Automated Toolset System reports and information relevant to their battlespace that best feeds their operations. In addition to customized reports focused on their battlespace, recommend the following reports be pre-programmed and automated across Afghanistan:
- (a) (U//<del>FOUO)</del> Biometric Enabled Watchlist Exit: Any time a Biometric Enabled Watchlist level 1-5 is biometrically toggled off an installation (Entry Control Point quality assurance)
- (b) (U//<del>FOUO)</del> BEWL Entry: Any time a Biometric Enabled Watchlist level 1 or 2 is biometrically toggled on an installation (Immediate force protection threat)
- (c) (U//<del>FOUO</del>) Squatter Report: A daily report with Local Nationals that have remained on post longer than 24 hours (Force protection situational awareness)
- (d) (U//FOUO) Enrollment Violations: A daily report with Local Nationals that have been toggled off post with less than a 10-2-1-1 profile (Biometrics situational awareness)
- (e) (U//<del>FOUO</del>) Local National population: A monthly report that shows Local Nationals that checked into post at least 15 days that month (Counterintelligence screening situational awareness)
- (f) (U//FOUO) Local National population: A weekly report that shows Local Nationals that haven't checked into post in the past seven days (Force protection threat situational awareness)
- (4) (U//FOUO) There are discretionary fields that, if made mandatory, would address some of the accountability issues. Recommend simply adding the employer name, sponsor information, and duty location would help facilitate accountability of the Local National

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population. Requiring employer-provided Local National emergency contact number would assist cellular phone intelligence exploitation efforts (Exhibits 4I, 4Q, and 4AG).

(5) (U//FOUO) Finally, Task Force Biometrics and Counterintelligence assets require a more proactive force protection posture. Recommend a policy change to allow 48 hours of prescreening lead-time before a contractor brings a new hire on base. The 48 hour lead-time would allow the counterintelligence and biometrics team to search applicable databases for derogatory information in support of the Force Protection Screening Cell background search. An increase in resources for Task Force Biometrics would also allow them to reengage some of the initiative-based analysis they conducted prior to their drawdown (Exhibits 4Q and 4AG). These techniques could help provide another layer of active defense to mitigate threats that are largely unimpeded in the Bagram Ground Defense Area.

15. <del>(S//NF)</del> <u>(8f)</u>

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

a. (U//FOUO) Did any Local Nationals have security clearances? If so, at what access and what date was the clearance granted? Did they have any verifiable, derogatory information in their investigation if applicable; or past? Nayeb did not have a security clearance (Exhibit 4G). The current policy standard limiting security clearances to a very select subsection of Local Nationals (e.g. dual-citizenship linguists) does not require adjustment (Exhibits 4G and 4CW).

b. (<del>S//NF</del>)

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

(1) (U//<del>FOUO)</del> Effective screening and vetting of Local Nationals and Other Country Nationals is of increasing importance. A tapered force protection capability as Coalition Forces drawdown occurs may place Coalition Forces at a higher risk for insider threat. Stringently enforced screening and vetting processes with Local Nationals and Other Country Nationals are vital in mitigating these threats. Although Bagram Airfield has improved its screening and vetting process, a number of critical vulnerabilities remain. Vetting is a post-entry reliability

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determination and an important layer of the force protection plan. Yet the Commander, Bagram Airfield, needs additional personnel qualified to screen and vet Local National and Other Country Nationals to ensure full compliance with established procedures and conduct proper oversight (Exhibits 2AB, 4AR, 4AT, 4AU, 4AV, 4AX, 4AY, 4BA, and 4AO). Recommend review of potential sourcing option to meet Bagram Airfield's requirement.

- (2) (U//<del>FOUO)</del> Fluor and United States security personnel overlooked a single indicator during the vetting process. Nayeb's Biometric Automated Toolset System profile included an uploaded copy of his registration dossier (Exhibits 4U and 4CF). This registration dossier contained a scanned memorandum that detailed his acceptance into the Afghanistan Peace and Reintegration Program and his prior association as a Taliban insurgent. The Fluor Force Protection Screening Cell received and uploaded this memo without making a subsequent administrative note in his record or notifying a counterintelligence element for advisement. If known or discovered, United States security personnel would exploit this background information in subsequent interviews (Exhibits 4AR, 4AT, and 4AX). The force protection screening and counterintelligence support team screening integrates questions that cover previous insurgent ties, and would leverage this information into more targeted questions (Exhibits 4L and 4R). The reintegration memo and data was available for discovery by all parties who reviewed the Biometric Identity Intelligence Resource file (4AD). While Nayeb's answers to the 24 March 2016 Counterintelligence Support Team screening appear trained and coached, additional background information would enable targeted questioning by counterintelligence agents to properly assess the risk (Exhibits 4R, 4U, 4AT, 4AX, and 4BA). This missed indicator represents a lost opportunity to mitigate the threat posed by Nayeb. The value and significance of the overlooked reintegration memo may have proved vital in the postentry reliability determination. Recommend the list of reintegrated Taliban and other insurgent members to be recovered and compared to current Local National workers within Afghanistan through the Biometrics Automated Toolset System. United States Forces - Afghanistan should nominate these individuals for Biometric Enhanced Watchlist level 6 and other appropriate identifying information in the Biometrics Automated Toolset System and the Biometric Identity Intelligence Resource (Exhibits 4AC and 4AW). These members should face additional scrutiny and targeted screening procedures for continued access. Counterintelligence Support Team screeners must be trained and disciplined to ensure they review every file uploaded into a Biometric Identity Intelligence Resource profile during their preparation for each screening. Additionally, screeners must meet the Task Force Biometrics standard that requires them to upload and individually categorize documents that fall outside a normal registration packet (Exhibit 4Q).
- (3) (U//<del>FOUO</del>) Beyond the miss-categorized memorandum that was attached to Nayeb's Biometrics Automated Toolset System registration file, there was a significant delay at Bagram

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Airfield (Bagram Airfield) from Nayeb's date of employment until his first Counterintelligence Support Team screening (Exhibits 4AI and 4AJ). Prior to 12 November 2016 there was no requirement to screen Local Nationals outside four defined categories: 1) linguists and cultural advisors, 2) armed security guards or gate processing personnel, 3) those who have recurring access, escorted or unescorted, to headquarters, computer networks or communications units, facilities, or buildings, and 4) those determined by the local supported command (Exhibit 4AT). While there was no requirement, every base except Bagram Airfield was able to conduct annual Counterintelligence Support Team screenings on their Local National population (Exhibits 4L and 4R). The five-year delay highlights an imbalance in the Counterintelligence Support Team personnel allocation across the Afghanistan and created risk for Bagram Airfield (Exhibit 4AP). This risk was not present at any other installation in Afghanistan. This imbalance, coupled with the lack of a requirement to conduct Counterintelligence Support Team screenings, led to the five-year delay before Nayeb was screened (Exhibits 4AI, 4AI, and 4AT).

(4) (S//NF)

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

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Base	Local Nationals	Other Country	Current CIST	Required CIST
		Nationals	Personnel	Personnel
AP Lightning				
Arena				
Bagram Airfield				
Dwyer				
Fenty				
Gamberi		/53/434	4- /5//4/4 4-	
HKIA	(b)(1)1.4a, (b)(1)1.4c			
KAF				
Mes/Marmal				
New Kabul Compound				
RS HQ				
Shorab				

(S//NF) Figure 3: Counterintelligence Support Team Coverage

(5) (<del>S//NF)</del>

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

(6) <del>(S/NF)</del>

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

 $(7) \left( \frac{S//NF}{} \right)$ 

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

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(b)(1)1.4a, (b)(1)1.4c

(8) <del>(S//NF)</del>

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

16. (U//<del>FOUO</del>) (8g) Describe in general the force protection measures on Bagram Airfield. In your opinion, are those measures sufficient? If not, you will make recommendations, as appropriate given your findings, to improve force protection for the forces on the base.

a. (U//<del>FOUO</del>) Describe in general the force protection measures on Bagram Airfield.

(1) (S//NF)

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

(2) (S //NF)

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

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-SECRET//NOFORN-

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(b)(1)1.4a, (b)(1)1.4c

(3) (S//NF)

(b)(1)1.4a, (b)(1)1.4b, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

 $(4) \frac{(S//NF)}{(S/NF)}$ 

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

(5) (<del>S//NF)</del>

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

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(b)(1)1.4a, (b)(1)1.4g

(6) <del>(S//NF)</del>

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

 $(7) \left( \frac{\text{S}//\text{NF}}{\text{NF}} \right)$ 

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

(9) (<del>S//NF)</del>

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

38

SECRET//NOFORN

**EXHIBIT 1** 

**USARCENT FOIA FA-17-0184** 

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(b)(1)1.4a, (b)(1)1.4g

b. (U//<del>FOUO</del>) In your opinion, are those measures sufficient?

(1) (<del>S//NF)</del>

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

(2) (S//NF)

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

(3) (<del>S//NF</del>)

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

(4) (S//NF)

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

39

SECRET//NOFORN

**EXHIBIT 1** 

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(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

c. (U//<del>FOUO</del>) If not, you will make recommendations, as appropriate given your findings, to improve force protection for the forces on the base.

(1) (S//NF)

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

(2) <del>(S//NF)</del>

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

40

SECRET//NOFORN

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(b)(1)1.4a, (b)(1)1.4c

(3)(S//NF)

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

(4) (S//NF)

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

(5) (<del>S//NE</del>)

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

(6) (S//NF)

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

41

-SECRET//NOFORN

**EXHIBIT 1** 

**USARCENT FOIA FA-17-0184** 

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(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

of action.

- 17. (U//<del>FOUO</del>) (8h) What is Bagram Airfield's base access policy? When was the last review of that policy? You will make recommendations, as appropriate given your findings, regarding that base access policy.
- a. (U//FOUO) What is Bagram Airfield's base access policy? When was the last review of that policy?
- (1) (U//FOUO) Bagram Airfield's base access policy is codified in the "Badge, Screening, and Access Standard Operating Procedures," last revised on 02 December 2016 (Exhibit 2AB). This Standard Operating Procedure supersedes the 17 February 2015 Bagram Airfield "Badge and Screening Policy" in effect during the 12 November 2016 attack. The policy identifies entrance onto Bagram Airfield and establishes procedures for controlling access and privileges for Local Nationals, Other Country Nationals, Common Access Card holders, and Coalition Forces. This policy also outlines the procedures for barring personnel and enhancing force protection during military operations. The Directorate of Emergency Services, under the authority of the U.S. Forces-Afghanistan Area Support Group Commander, executes this policy (Exhibits 2AB, at 1 and 2BC). All personnel requesting access to Bagram Airfield will submit a badge application, Form 103 (Bagram Airfield Badge Request Form), Form 86 (Visitor Request), proper identification and medical documentation (Exhibit 2AB, at 2). The Force Protection Screening Cell screens and vets all personnel (Local Nationals and Other Country Nationals) desiring access to Bagram Airfield and enters applicants into the Biometric Automated Toolset System (Exhibit 2AB, at 3).
- (2) (U//FOUO) The Bagram Airfield Ground Defense Area forces are responsible for physical inspections of personnel and vehicles entering and exiting Bagram Airfield. All Local Nationals and Other Country Nationals entering Bagram Airfield on foot, that are in possession of a Bagram Airfield badge, will enter through Entry Control Point 1 and undergo personnel and property searches as well as biometrics verification (Exhibit 2AB). Furthermore, they will hand-carry a Form 86, Letter of Authorization and/or Letter of Justification authorizing their entry and

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hand-carried items (Exhibit 2AB). Authorized Local Nationals and Other Country Nationals arriving at Bagram Airfield via vehicle will enter Entry Control Point 3. As with Entry Control Point 1, all Local Nationals and Other Country Nationals must submit the required documentation, undergo personal and vehicle searches, and enrollment into the Biometric Automated Toolset System database. Escorts are required for all Local Nationals entering the installation to and from the Entry Control Points. Final approval authority for base access is the Area Support Group Commander or designee (Exhibit 2AB, at 3). Entry Control Point 10 is for U.S. and coalition tactical vehicles only and the Bagram Ground Defense Area Commander is responsible for security protocol at this Entry Control Point (Exhibit 2AB, at 7). The post-attack revision of the Bagram Airfield base access policy (December 2016) made several changes to mitigate vulnerabilities, principally:

- (a) (U//<del>FOUO</del>) The December 2016 policy states that "All personnel, not in uniform, are required to maintain and display either a Common Access Card, Bagram Airfield Access Badge or Resolute Support theater badge" (Exhibit 2AB, at 9). The previous version did not include military when out of uniform, and only applied to civilians (Exhibit 2AA, at 9).
- (b) (U//<del>FOUO)</del> The revised policy states all personnel on Bagram Airfield are subject to be challenged and asked for Identification or Badge at any time (Exhibit 2AB, at 10); the 2015 policy did not include this language.
- (c) (U//<del>FOUO)</del> The 2016 policy eliminated Yellow Badges. This is significant as the 2015 policy allowed Local Nationals to possess Yellow Badges, authorizing them unescorted access and the authority to escort up to ten other Local National personnel and five vehicles (Exhibit 2AA, at 12).
- (d) (U//<del>FOUO)</del> The new policy includes convoy escort requirements for Green Badge Holders (Resident, non-U.S personnel), to include number of escorts required as well as lead and trail vehicle requirements if escorting more than one Local National vehicle entering Entry Control Point 3 (Exhibit 2AB, at 12, 15); the 2015 policy was vague and did not specify number of escorts required for convoys (Exhibit 2AA, at 15).
- (e) (U//<del>FOUO)</del> The new policy changed Green Badge expiration and renewal timelines from 12 months to six months to ensure more frequent Force Protection Screening (Exhibit 2AB, at 13).
- (f) (U//FOUO) The new policy reiterated conditions and restrictions levied upon Red Badge Holders. Additionally, this 2016 revision eliminated the exemption that allowed Local Nationals to operate unescorted within their workplace (Exhibits 2AA, at 11 and 2AB, at 11)

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- b. Make recommendations, as appropriate given your findings, regarding that base access policy.
- (1) (U//FOUO) Nayeb was authorized entry to Bagram Airfield as a Red Badge holder (Exhibit 2Q). Neither the 2015 Bagram Airfield Badging and Access Policy in place on 12 November 2016, nor the December 2016 revised policy, would have prevented the attacker's access to Bagram Airfield (Exhibits 2AA and 2AB). Recommend re-screening all Local National personnel employed on Bagram Airfield to verify security status and re-issue appropriate color badge based on assessed risk to force protection. This process is currently underway but is expected to take four to six months to complete.

(2) <del>(S//NF)</del>

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

 $(3) (\frac{S//NF}{})$ 

(b)(1)1.4a, (b)(1)1.4c

(b)(1)1.4a, (b)(1)1.4c

(4) (U//<del>FOUO</del>) The 2016 policy no longer contains a reference prohibiting Local Nationals from possessing maps and documents while on Bagram Airfield. Recommend adding statements similar to the 2015 policy that prohibits Local Nationals from possessing maps and documents except Afghan National Defense Security Forces with justification (Exhibit 2AA, at 17).

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(5) (U//FOUO) Recommend requiring Counterintelligence and Preliminary Credibility Assessment Screening System vetting annually for all contractors with weapons privileges. The 2016 policy states "all contractors will be required to pass a Counterintelligence screening and a Preliminary Credibility Assessment Screening System examination prior to weapons privileges being authorized on Bagram Airfield" (Exhibits 2AB, 4CO, 4CQ, 4AU, 4AV). This indicates that contractors are only required to be screened once in order to be able to carry weapons. Considering the number of contract guards that failed vetting since the 12 November 2016 attack, incorporate annual screenings to reduce vulnerability and risk.

(6) (S/NF) (b)(1)1.4a

(b)(1)1.4a

- (7) (U//FOUO) Recommend Command Operations Centers at each Entry Control Point initiate 24-Hour Scan Reports. The 2016 policy requires a daily 24-hour Scan Report checked to ensure all Local Nationals who scanned on the installation scanned off the installation over a 24-hour period (Exhibit 2AB, paragraph 20.a). However, the current requirement does not indicate who is responsible for running this report. While numerous agencies may access the biometrics report, it is unclear who has the responsibility for ensuring all Local Nationals actually departed.
- (8) (U//FOUO) Recommend Task Force Biometrics initiate the 30-day Inactivity Report. Task Force Biometrics can provide results to the Combined Joint Operations Center for review to further reduce vulnerabilities. The 2016 policy directs the generation of a daily 30-day Inactivity Report in order to identify Local National workers who did not utilize their Bagram Airfield access badge for entry or exit within the past 30 days (Exhibit 2B, paragraph 20.b). However, this paragraph does not specifically task a particular organization nor is there a system of checks and balances to ensure the report is accomplished.

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(9) (S/NF) (b)(1)1.4a

(b)(1)1.4a

 $(10) (\frac{S//NF}{})$ 

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

- 18. (S//NF) (8i) In general, describe Bagram Airfields entry and exit procedures for Local Nationals. Are Local Nationals searched upon entry onto Bagram Airfield? What are the procedures, if any, to search Local Nationals coming onto Bagram Airfield? How many s-vests entered Bagram Airfield via Local Nationals, and by what method(s) did they accomplish this? You will make suggestions, as appropriate given your findings, regarding the procedures for the entry/exiting the base.
- a. (S//NF) In general, describe Bagram Airfields entry and exit procedures for Local Nationals.
- (1) (U//<del>FOUO</del>) Bagram Airfield's base access policy is codified in the "Badge, Screening, and Access Standard Operating Procedures," last revised on 02 December 2016 (Exhibit 2AB). This Standard Operating Procedure supersedes the 17 February 2015 Bagram Airfield "Badge and Screening Policy", in effect during the 12 November 2016 attack. The

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policy identifies entrance onto Bagram Airfield and establishes procedures for controlling access and privileges for Local Nationals, Other Country Nationals, Common Access Card holders, and Coalition Forces. This policy also outlines the procedures for barring personnel and enhancing force protection during military operations. The Directorate of Emergency Services, under the authority of the U.S. Forces-Afghanistan Area Support Group Commander, executes this policy (Exhibits 2AB, at 1 and 2BC). All personnel requesting access to Bagram Airfield will submit a badge application, Form 103 (Bagram Airfield Badge Request Form), Form 86 (Visitor Request), proper identification and medical documentation (Exhibit 2AB, at 2). The Force Protection Screening Cell screens and vets all personnel (Local National and Other Country National) desiring access to Bagram Airfield and enters applicants into the Biometric Automated Toolset System (Exhibit 2AB, at 3).

- (2) (U//<del>FOUO</del>) Local nationals entering Bagram Airfield by foot will use Entry Control Point 1 and require personnel and property searches, biometric screening, and all proper documentation (Exhibit 2AB). Local Nationals will process through eight security layers and five physical searches. In sequence, the stations are as follows:
  - (a) (<del>S//NF)</del>
  - (b) (<del>S//NF)</del>
  - (c) (<del>S//NF)</del>
  - (d) (<del>S//NF)</del>

(b)(1)1.4a, (b)(1)1.4g

- (e) (<del>S//NF)</del>
- (f) (<del>S//NF)</del>
- (g) (<del>S//NF)</del>
- (h) (<del>S//NF)</del>
- (3) (U//<del>FOUO</del>) Local Nationals exiting Bagram Airfield by foot will exit using Entry Control Point 1 and are subject to personal and property searches in reverse order (Exhibits 2AB and 2O). Adherence to this standard is corroborated by Task Force Tiger, the Reed Inc. Site Manager, and the U.S. Marine Corps advisors operating the Entry Control Point (Exhibits 2B, 2C, 2J, and 2N).

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(4)  $(\frac{S}{NF})$  (b)(1)1.4a

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

- (a) (S//NF)
- (b) <del>(S//NF)</del>

search

(c) <del>(S//NF)</del> search

(d) (<del>S//NF)</del>

(b)(1)1.4a

- (e) (<del>S//NF)</del>
- (f) (<del>S//NF)</del>
- (g) <del>(S//NF)</del>
- (h) (<del>S//NF)</del>
- (i) (<del>S//NF)</del>
- (5) (U//FOUO) (Exhibits 2AB and 2P, Diagram of Entry Control Point 3). Local Nationals exiting Bagram Airfield via vehicle will exit using Entry Control Point 3 and are subject to personal and vehicle search followed by Z-Backscatter X-Ray scanner before exiting. Adherence to this standard is corroborated by Task Force Tiger, the Reed, Inc. Site Manager, and the U.S. Marine Corps advisors operating the Entry Control Point (Exhibits 2B, 2C, 2J, and 2N).
- b. (S//NF) Are Local Nationals searched upon entry onto Bagram Airfield? What are the procedures, if any, to search Local Nationals coming onto Bagram Airfield? How many suicide

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vests entered Bagram Airfield via Local Nationals, and by what method did they accomplish this?

- (1) (U/FOUO) All Local National employees are searched upon entry onto Bagram Airfield (Bagram Airfield) through Entry Control Point 1 and Entry Control Point 3 (Exhibits 2B, 2C, and 2AB). Local Nationals entering Bagram Airfield by foot will enter through Entry Control Point 1 and are rotated through eight security stations with physical searches being conducted at five (5) stations as described in Entry Control Point 1 entering and exiting procedures (Exhibits 2B, 2C, 2N, 2AB, and 2O). Similar to Entry Control Point 1, Local National drivers and vehicles entering Bagram Airfield through Entry Control Point 3 are rotated through nine security stations with physical searches being conducted at three stations as described in Entry Control Point 3 Entering and Exiting procedures (Exhibits 2B, 2C, 2N, 2AB and 2P). In addition to the standards laid out in the Standard Operating Procedure, the 12 November 2016 attack led to the addition of coalition forces at each Entry Control Point search station to provide oversight of Local National Reed Inc. employees and to conduct secondary searches (Exhibit 2B, 2C, 2G, 2H, 2J, 2L, and 2N).
- (2) (S/NF) The evidence supports the suicide vest was assembled on Bagram Airfield by Nayeb at his workplace inside the non-tactical vehicle yard and not preassembled prior to entering the installation (Exhibit 2Q). Counterintelligence source reporting indicates Nayeb likely smuggled small quantities of homemade explosive onto Bagram Airfield over approximately four months (Exhibits 4CK, 4CI, 5N, and 5A). Nayeb reportedly smuggled homemade explosives onto Bagram Airfield utilizing a smokeless tobacco style bag or can which he then concealed in another container (Exhibits 5N and 5A). The string used to assemble the vest was a forensic match to string found at Nayeb's worksite (Exhibit 2Q). Similar components of the suicide vest used as projectiles (bolts and nuts) were also found at Nayeb's work facility (Exhibit 2Q). In addition, the switch used to trigger the suicide vest was similar to switches that were readily available and unaccounted for in a trash container at Nayeb's work facility (Exhibit 2Q). There is no evidence at this time that reveals additional vests were constructed on or entered Bagram Airfield (Exhibit 2Q).
- c. (S//NF) You will make suggestions, as appropriate given your findings, regarding the procedures for the entry/exiting the base.

(1) <del>(S//NF)</del>

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

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(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

(2) (S//NF)

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4c, (b)(1)1.4g

- 19. (S//NF) (8j) Did this incident uncover any vulnerabilities as it relates to accountability in general, of Local Nationals entering and exiting the base? Are security forces properly maintaining accountability of the entry and exit of Local Nationals? You will make recommendations, as appropriate given your findings, to the procedures or equipment regarding the entry and exit of Local Nationals onto Bagram Airfield.
- a. (S//NF) Did this incident uncover any vulnerabilities as it relates to accountability in general, of Local Nationals entering and exiting the base? Are security forces properly maintaining accountability of the entry and exit of Local Nationals?

(1) (S//NF)

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

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(b)(1)1.4a, (b)(1)1.4g

(2) (U//FOUO) In addition to Local Nationals authorized to perform escort duties, Local Nationals also held key access control positions at all Entry Control Points (Exhibit 2AX). The Local Nationals manned all of the various search stations and often times were supervised by other Local National supervisory personnel (Exhibits 2B, 2C, 2N, 2AQ, 2AX). Furthermore, the Local National guards at several locations within the Entry Control Points were armed and operated with minimal oversight by coalition personnel (Exhibit 2B). Georgian Soldiers now supervise all but the outermost checkpoints within the Entry Control Points, however several Local Nationals are still authorized to carry weapons (Exhibits 2B, 2C and 2N).

(3) (<del>S//NF)</del>

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

(4) (<del>S//NF</del>)

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

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(5) (S/NF) (b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

(6) (S//NF) (b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

(7) (S/NF) (b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

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(b)(1)1.4a, (b)(1)1.4g

b. (S//NF) Make recommendations, as appropriate given your findings, to the procedures or equipment regarding the entry and exit of Local Nationals onto Bagram Airfield.

(1) <del>(S//NF-</del>

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

(2) <del>(S//NF)</del>

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

(3) (<del>S//NF)</del>

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

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(4) (<del>S//NF)</del>

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

(5) (<del>S//NF)</del>

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

 $(6) (\frac{S//NF}{})$ 

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

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(b)(1)1.4a, (b)(1)1.4g

20. (U//FOUO) (8k) What steps did the command take immediately following the incident?

a. (U//FOUO) Immediately prior to the explosion, over 200 personnel were gathering at the run start site at an area referred to as the "Disney Clamshell." The Commander and (b)(3). (b)(6) (b)(3). (b)(6) for Bagram Airfield had departed their quarters at 0530 en route to the run site, where the commander was scheduled to make the opening remarks (Exhibit 3P). The Resolute Support Sustainment Brigade (b)(3). (b)(6) and over a dozen Soldiers, having realized they could not conduct planned combatives certification inside the clamshell due to the run, walked past the Bagram Airfield (b)(3). (b)(6) and (b)(3). (b)(6) and moments later were within meters of the explosion (Exhibit 3M). The Area Support Group (b)(3). (b)(6) had just signed in on the roster and initially thought the explosion sound emanated from the loudspeakers playing music for the Morale, Welfare, and Recreation event. After a hush fell over the assembled group, leaders began orchestrating efforts to clear the area and to begin treating the wounded (Exhibit 2L).

b. (U//<del>FOUO</del>) Among the first uninjured on scene were the Bagram Airfield Commander and (b)(3), (b)(4he Area Support Group (b)(3), (b)(6) and as well as the (b)(3), (b)(6) Romanian Military Police element initially staged for the event. The Bagram Airfield instructed those on scene to "secure the blast site and ensure no threats were in the area, conduct first aid and CASEVAC, sound the alarm for a ground attack, place the entire base on full alert with everyone in [Personal Protective Equipment] and locked down except personnel involved in security and first responder operations, and to gain 100% personnel accountability" (Exhibit 3P). The Area Support Group (b)(3), (b)(6) worked with the Romanian Military Police element to establish the Incident Command, which the Base Provost Marshal assumed upon arrival soon thereafter (Exhibits 2L and 2I). The Bagram Airfield and Area Support Group conducted a visual sweep of the surrounding area to (b)(3), (b)(6) look for secondary devices based upon a known tactic for local threat actors (Exhibit 2L). And (b)(3), (b)(6) a Senior Medical Operations Noncommissioned Officer preparing for the run, and his medic began serving as first responders and treating the wounded, many of whom were piled on top of each other upon their arrival (Exhibits 2L, 3M, and 6H).

c. (U//<del>FOUO)</del> Due to the number and severity of the wounded, leadership onsite began identifying personnel and non-standard evacuation vehicles for transport to the Craig Joint Theater Hospital approximately 800 meters away from the blast site. Meanwhile, the Area Support Group (b)(3), (b)(6) and (b)(3), (b)(6) relocated to the Area Support Group Headquarters to activate the Emergency Operations Center – from which they coordinated

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follow-on actions by first responders still moving towards the site or transporting personnel to the hospital. The Combined Joint Operations Center, approximately 300 meters away from the blast site, directed the Persistent Threat Detection System towards the scene of the incident and received reports from the Emergency Operations Center (primarily via phone) and the Incident Commander (via Light Mobile Radio) (Exhibits 3G and 3H), relaying reports to the Resolute Support Headquarters in Kabul.

d. (U//FOUO) The (b)(3), (b)(6) of Bagram Airfield issued guidance to and through the Combined Joint Operations Center to assume mission command (Exhibits 3P, 3J). Beyond the confirmed explosion and known casualties – initially seven reported to the Craig Joint Theater Hospital (Exhibits 6A and 3X) – the headquarters received reports of additional potential force protection threats (Exhibits 3E, 3G, 3H, 3I, 3J, 3L, 3P, 3X). Perimeter guards reported unmanned aerial systems sightings at 0632, among other sightings; a suspicious brown box and crowd massing at Entry Control Point 1 at 0613 and 0635, respectively; small arms fire at 0630 and 0652; and unconfirmed explosions at 1014 and 1157 (Exhibits 3E and 3X).

e. <del>(S//NF</del>)

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

f. (S//NF) As those outside of the immediate area continued to wait in the bunkers and casualties underwent treatment at the hospital, the Combined Joint Operations Center began orchestrating efforts to manage the local national population still on the base (Exhibits 3G, 3H, 3I, 3J, 3T, 3X).

(b)(1)1.4a, (b)(1)1.4d, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4d, (b)(1)1.4g

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(b)(1)1.4a, (b)(1)1.4d, (b)(1)1.4g

g. (U//<del>FOUO)</del> Were those steps appropriate given the circumstances?

(1) (U//FOUO) In light of the circumstances – an unexpected form of inside-the-wire attack followed by sporadic reporting from around the base potentially indicating a complex attack – the chain of command's actions following the incident helped contain and mitigate the effects of the attack. Despite the limited visibility (zero illumination at the time of the attack) (Exhibit 3Y), and the initial uncertainty on what caused the explosion, the Combined Joint Operations Center and leaders on the ground made sound decisions and directed appropriate actions. The hospital was notified within two minutes of the blast, a Military Police patrol was on site within three minutes, and rotary wing assets were mobilized within seven minutes (Exhibits 3E and 3X). Further, the establishment of Incident Command quickly progressed from an ad hoc assortment of leaders and first responders to the Area Support Group Provost Marshal, and medics and others onsite orchestrated first aid and movement of casualties to the hospital in a sequence conducive to life-saving treatment (Exhibits 3E, 3X, 6A, 6B, 6C, and 6H).

(2) (S//NF)

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

(3) (U//<del>FOUO</del>) In the days and weeks that followed, the command took a number of actions to understand the event and to prevent similar insider attacks. The institution of a base-

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wide Operations, Intelligence, and Investigation Update – which has now become an Operations and Intelligence Update – assembled the right leaders to maximize crosstalk and shared understanding. Through those sessions, the command identified dozens of initiatives that would improve perimeter security, address insider threat risks, and better coalesce the community of practice (Exhibit 3A and 3K). Through concerted command presence, the Bagram Airfield Commander's leadership has reduced the risk of a similar attack. His "New Normal", with lines of effort to address 1) Contractors Policies and Practices; 2) Improvement of Layered Security; and 3) Integrated Base Response roles and responsibilities (Exhibit 3P) has begun addressing the culture of complacency that may have allowed the community to miss discernible indicators of or potential for high profile attacks.

- h. (U//<del>FOUO)</del> Are there any suggested improvements to the command's handling of such an incident in the future?
- (1) (U//FOUO) To an extent, the response to this attack benefitted from proximity to key leaders and headquarters. The immediate availability of both the Division (b)(3), (b)(5) and the Area Support Group (b)(3), (b)(6) minimized the time required for key leaders to acquire situational understanding. Further, the presence of Romanian Military Police at the run start site placed them on scene within three minutes of the blast (Exhibits 2L and 3E). Favorable weather, albeit with no illumination, allowed persistent intelligence, surveillance, and reconnaissance assets to acquire over watch of the blast site. And the presence of a medical team on site albeit no Field Litter Ambulance for this particular event (Exhibits 6A and 6H) expedited first responder treatment and medical evacuation via non-standard means (Exhibits 6A, 6B, 6C, and 6H). Further, the incident occurring on an installation with a Role III hospital with robust trauma capability only 800 meters down the main thoroughfare minimized the time between the point of injury and surgical-level care (Exhibit 6B).
- (2) (U//FOUO) Most suggested improvements regarding the command's response to the incident pertain to actions prior to the incident itself. First, for events like the run scheduled for that morning, recommend commands execute Special Event Vulnerability Risk Assessments required for events involving 300 or more people prior to execution of large events. As per DoDI 2000.16 (Exhibit 2BE) and the Bagram Airfield Antiterrorism Plan (Exhibit 2V), this assessment would identify potential threats and risks and then identify and rehearse key actions required by first responders and unit leaders. Had such an assessment occurred prior to 12 November 2016, emergency management leaders and responders would identify and coordinate the requirement for an on-site ambulance and the location of the nearest Casualty Collection Point and associated medical supplies (two Casualty Collection Points are within 200 meters of the blast site.) Rehearsing contingencies may also have led the medics to more appropriately tailor their aid bags towards potential threat streams, rather than explicitly for run injuries

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(Exhibit 6H). Finally, rehearsals would have more clearly delineated the mission command plan and the appropriate posture consistent with Anti-Terrorism and Force Protection doctrine.

(3) (U//FOUO) Second, recommend further consideration of the "Big Voice" battle drills and the Base Defense SOP might improve shared understanding and improve responsiveness throughout the base. At present, calls exist for indirect fire, an attack on the perimeter, mass casualty (as determined at the Craig Joint Theater Hospital), and active shooter (Exhibit 2U). In this instance, the "Cavalry Charge" call led personnel to seek shelter and may have expedited Task Force Tiger's mobilization and response to an external threat, but it also left the vast majority of base personnel under cover for an extended period of time. This compounded challenges with accountability both for coalition and local national personnel (Exhibits 2L and 3L). See PIR 8n for further analysis of "Big Voice" recommendations.

(4) (<del>S//NF)</del> Third, recommend

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

(5) (<del>S//NF</del>) Fourth,

(b)(1)1.4a, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4g

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(6) (S//NF) Fifth,

(b)(1)1.4a, (b)(1)1.4d, (b)(1)1.4g

(b)(1)1.4a, (b)(1)1.4d, (b)(1)1.4g

- 21. (U//<del>FOUO</del>) (81) What steps did PMO take following the incident? Were those steps appropriate given the circumstances? Are there any suggested improvements to PMO's handling of such an incident in the future?
- a. (S//NF) What steps did PMO take following the incident? At approximately 0538, Bagram Airfield Provost Marshal Office responded to a person-borne improvised explosive device explosion in the vicinity of the Bagram Airfield Disney Post Exchange. The Bagram Airfield Provost Marshal's Office dispatched Emergency Medical Service to the scene at 0540 as additional Military Police patrols arrived to assist with lifesaving procedures, attempt to establish an initial cordon, and conduct safety sweeps (Exhibit 2AC). (b)(1)1.4a

(b)(1)1.4a

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(b)(1)1.4a

- b. (U//FOUO) Were those steps appropriate given the circumstances? Yes, the PMO steps were appropriate and complied with Army Field Manual 3-39, "Military Police Operations", and Bagram Airfield standards identified in the First Responders Operation Working Group Standard Operating Procedure (Exhibit 2AH, 2G). Field Manual 3-39, "Military Police Operations", Chap. 3-105, establishes guidelines for Military Police responses to terrorist attacks. These emergency response actions incorporate measures to treat casualties, apprehend perpetrators, preserve evidence, minimize property damage, restore operations, and expedite the criminal investigation and collection of lessons from terrorist incidents (Exhibit 2G). The Bagram Airfield Provost Marshal's Office Military Police were one of the first responders to arrive at the scene and immediately began to conduct lifesaving procedures on the wounded. Emergency Medical Services, Military Police patrols, Military Working Dogs and Explosive Ordinance Disposal worked to establish the initial cordon and search for secondary devices. Although there was confusion early in the response, the actions of the Provost Marshal's Office were in line with Army Field Manual 3-39 and Bagram Airfield's First Responders Working Group.
- c. (U//FOUO) Are there any suggested improvements to PMO's handling of such an incident in the future?
- (1) (U//FOUO) Recommend rehearsing the incident response plans and establishing a concrete incident command reporting chain. Conduct these events as described in the Bagram Airfield Base Defense Plan, dated 15 December 2015 (Exhibit 2U). Include Tactical Exercises Without Troops (TEWTs) or tabletop exercises, in order to synchronize communication and improve unity of effort during incident response through incident command. Despite the language of the Bagram Airfield Base Defense Plan (Exhibit 2U), the incident response was not synchronized between first responders. An initial Incident Command was attempted to be established by the first arriving patrol however, the responding units of Emergency Management Services, Fire, and Explosive Ordinance Disposal did not report to an identified incident commander who could then direct additional assets where needed. The uncoordinated arrival of additional personnel to the scene for causality evacuation, secondary explosive device sweeps, and other activities allowed multiple people to walk and drive through the crime scene and

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possibly distort evidence. For instance, the mentioned, "I (b)(3), (b)(6)don't want to sound coarse, but when the fire trucks showed up, they were driving right down the road and me and the CG were pushing them off so they didn't run over body parts and stuff like that" (Exhibit 2L). A clearly defined and standardized incident command, in accordance with the National Incident Management System, will enhance first response and crime scene coordination, preventing such instances from occurring (Exhibit 2AJ). Communication was also an issue at the scene of the incident with multiple agencies and coalition forces responding. Highlighting the communication challenges, (b)(3), (b)(6) stated there needs to be, "better communication with security forces patrolling the roads on Bagram Airfield. If you are going to have security forces patrolling our streets on Bagram at any hour of the day, they should have communication with either Task Force MED or USFOR-A and they have got to speak English." (Exhibit 6H). A lack of rehearsals, synchronized communication efforts, and clear leadership roles contributed to an inability to understand the situation from responding assets and coalition security forces. Incident Response Plan rehearsals could have alleviated some confusion and provided alternatives to language and communication barriers experienced on 12 November 2016.

(2) (S//NF) Recommend conducting Bagram Airfield-wide emergency management rehearsals to ensure all responding assets are familiar with processes and procedures as described in the Bagram Airfield Base Defense Plan (Exhibit 2U). (b)(1)1.4a

(b)(1)1.4a

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(b)(1)1.4a

- 22. (U/<del>/FOUO</del>) (8m) What steps did Task Force MED take following the incident? Were those steps appropriate given the circumstances? Are there any suggested improvements to Task Force MED's handling of such an incident in the future?
  - a. (U//<del>FOUO</del>) What steps did Task Force MED take following the incident?
- (1) (U//F<del>OUO</del>) On 12 0538 November 2016, a suicide bomber detonated near the Base Exchange along Disney Drive on Bagram Air Field (Exhibit 1B). The emergency room received notification of the blast and alerted the Trauma Czar and the of Clinical (b)(3), (b)(6) Services on duty that seven patients were inbound to Craig Joint Theater Hospital at which time an "Extended Trauma" was ordered (Exhibit 6A). An Extended Trauma requires all surgeons and nurses to report to Craig Joint Theater Hospital but does not initiate a full hospital recall (Exhibits 6A, 6B, 6C, 6F). The first seven patients arrived within minutes of the blast by vehicles of opportunity and ambulance in an order that was consistent with the severity of their injuries (Exhibits 6A, 6B). As the patients arrived they were transported into the trauma bay and given lifesaving care (Exhibits 6A, 6B). At 0615 it became apparent to the hospital staff that more than seven patients were going to require care. The (b)(3), (b)(6) of Craig Joint Theater Hospital (b)(3). (b)(6) ordered an internal MASCAL, which brings all Craig Joint Theater Hospital staff to the hospital (Exhibits 6A, 6C).
- (2) (U//FOUO) Patients were moved from the Trauma Bay to the Operating Room for surgery in accordance with the severity of their injuries (Exhibit 6B). On 12 November 2016, the operating room teams performed 43 procedures on nine patients, running up to four cases simultaneously in three operating rooms for over twelve hours (Exhibits 6A, 6B, 6E). A total of 19 patients received medical care on 12 November 2016 (Exhibit 6E).
- (3) (U//<del>FOUO</del>) Once the patients were stabilized and out of surgery, Craig Joint Theater Hospital staff prepared them for evacuation from theater via a Critical Care Air Transport (Exhibit 6A, 6B, 6c). The Critical Care Air Transport flight left for Landstuhl Regional Medical Center at approximately 0730 on 13 November 2016 with six intubated patients cared for by three Critical Care Air Transport teams (Exhibit 6A, 6B, 6C).
- (4) (U//<del>FOUO</del>) Task Force MED conducted four MASCAL rehearsals between 01 October and 12 November 2016 (Exhibits 6A, 6B, 6C). These rehearsals included all appropriate hospital staff as well as medical providers external to Craig Joint Theater Hospital (Exhibits 6A, 6B, 6C). As a result of these rehearsals, Task Force MED was well prepared for

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the events of 12 November 2016 and was able to integrate medical professionals from external agencies who arrived to assist (Exhibits 6A, 6B, 6C).

- b. (U//FOUO) Were those steps appropriate given the circumstances? Yes. The steps taken by Task Force MED on 12 November 2016 were appropriate given the circumstance and are to be commended. The actions of Task Force MED saved the lives of the critically wounded who arrived to Craig Joint Theater Hospital. Every patient who arrived at Craig Joint Theater Hospital alive was stabilized and evacuated from theater alive (Exhibit 6B).
- c. (U//<del>FOUO</del>) Are there any suggested improvements to Task Force MED's handling of such an incident in the future?
- (1) (U//<del>FOUO)</del> Task Force MED conducted an extensive after action review with all members of the medical community on Bagram Airfield immediately following the incident (Exhibits 6A, 6B, 6C). In the after action review they captured specific areas where they could improve their operations (Exhibit 6E).

(2) (S/NF) (b)(1)1.4a

(b)(1)1.4a

23. (U//<del>FOUO)</del> (8n) Is the knowledge and training on Bagram Airfield regarding the "Big Voice" sufficient? Further, is the knowledge and training sufficient, detailing the actions individuals on Bagram Airfield should take regarding different proposed incidents?

a. (S/NF) (b)(1)1.4a

(b)(1)1.4a

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(b)(1)1.4a

- b. (S//NF) Training regarding individual actions upon "Big Voice" alarms is insufficient. Additionally, communication procedures to initiate a "Big Voice" alert are not well understood. Specific findings:
- (1) (S//NF) The first "Big Voice" alarm did not sound until 23 minutes following the detonation of a suicide vest on 12 November 2016 (Exhibit 2F, 2I, 2L, 2M).
- (2) (S//NF) All new personnel at Bagram Airfield view an instructional video at the passenger terminal upon arrival regarding "Big Voice" warnings and individual responsibilities (Exhibit 2AZ).
- (3) (S//NF) A personal response action card is available to personnel that covers individual actions to incidents such as active shooter, bomb threats, shelter-in-place, and indirect fire (Exhibit 2AV).
- (4) (S//NF) While indirect fire individual actions are understood due to the frequency of such attacks, no documented Bagram Airfield-wide training or rehearsals were conducted over the past six months to exercise responses to other types of warnings or attacks (Exhibit 2AZ, 2J, 2K).
- (5) (S//NF) Little to no coordination occurs between the Combined Joint Operations Center "Big Voice" controllers or military personnel and the Area Support Group Emergency Management Officer, resulting in a lack of mission command and unity of effort (Exhibit 2AZ, 2K, 2L).
- c. (U//<del>FOUO)</del> Are there any suggested improvements to enhance knowledge of actions to take for each type of incident?

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(1) (S/NF) (b)(1)1.4a

(2) <del>(S//NF)</del> (b)(1)1.4a

(b)(1)1.4a

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(3) (<del>S//NF)</del>

(b)(1)1.4a

(b)(1)1.4a

(4) (S//NF)

(b)(1)1.4a

(b)(1)1.4a

24. (U//<del>FOUO)</del> (80 and 8p) You may identify and describe any other processes, procedures, systems, and/or equipment that could have contributed to or influenced this incident. You will make suggested improvements, if any, regarding the same. Address any other matters pertaining to this incident that you deem relevant.

a. (S//NF)

(b)(1)1.4a

(b)(1)1.4a

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b. (<del>S//NF)</del> (b)(1)1.4a

(b)(1)1.4a

c. (<del>S//NF)</del> (b)(1)1.4a

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d. (<del>S//NF</del>) (b)(1)1.4a

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e. (<del>S//NF)</del> (b)(1)1.4a

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f. (S//NF) (b)(1)1.4a

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25. (U//<del>FOUO)</del> The point of contact for this memorandum is the undersigned at or thomas.s.james3.mil@mail.mil. (b)(6)

(b)(6)

THOMAS S. JAMES, JR. Major General, USA Investigating Officer

# Exhibit 2A:

(b)(3), (b)(6)

#### Case 3:19-cv-01455-B | Document 1-3 + Filed 06/19/197 | Page 188 of 198 > PageID 217

AUTHORITY: PRINCIPAL PURPOSE:		SWORN STATEMENT							
	For use of this form,	see AR 190-45; the proponent age	ncy is PMG						
	12270 M 2010 133-0000 15 15 17 48 30 42 000 15 1	PRIVACY ACT STATEMENT	W 2000 - 1000	COMMUNICATION OF					
PRINCIPAL PURPOSE	Title 10, USC Section 301, Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN)								
		To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline. law and order through investigation of complaints and incidents.							
ROUTINE USES:	Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions								
DISCLOSURE:	Disclosure of your SSN and other	r information is voluntary							
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Task Force Justice (	ClD) 16-17, 3rd Military P	olice Group (CID), Bagram	Airfield, Afgha	anistan, APO AE 09	9354				
9 (b)(3), (b)(	5)	WANT TO MAKE THE	E FOLLOWING STA	TEMENT UNDER OATH					
bomber, Mr. Ahmad exhibits in my invest At this time, CID do	investigation Law Enforcer d Nayab Abdul Zuhoor, ind stigation produced from oth	ment Report (LER): 00136-2 lexed as a subject for Murde are military agencies who ide o-conspirators as subjects in s/co-conspirators.	r and Attempted entified co-cons	d Murder. I have cl spirators to the suici	assified de bomber				
A. This investigatio	n is still open by CID at the late. CID is pending receip imson (AFOSI) Report, and	uded in your official Law E e time of this statement. All it of Final Autopsy Reports, I Final Lab Reports from AC isted within the next two we	identified investinal Informati	stigative activity by on Reports from ou L. I expect to seek	tlining				

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Exhibit 30 – Sworn Statement of (b) (6) 271700DEC16

This exhibit is an 8-page sworn statement and is a scanned copy of the original. (b) (6) (6) (b) (3) 10 USC §130b (b)(6) is the POC for the original document and can be contacted at (b)(3) 10 USC §130b (b)(6)

[		S	WORN S	STATEMENT					
1		For use of this form, see	e AR 190-	45) the proponent ager	ncy is PMG				
1	PRIVACY ACT STATEMENT								
	AUTHORITY:								
	PRINCIPAL PURPOSE:	To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline law and order through investigation of complaints and incidents.							
	ROUTINE USES: Information provided may be further disclosed to federal state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention placement, and other personnel actions.								
	DISCLOSURE:	Disclosure of your SSN and other in	formation i	s voluntary					
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	9 (b) (6)			WANT TO MAKE THE	FOLLOWING STATE	EMENT UNDER OATH			
follo	Q. How long have y	you been serving in the J3/5?							
Favo	A. I came in on STRAT air, about 2 September. I did not do PDSS here.								
5516	O Azervan familiar	with the task organization of	BAE an	d how it relates to	sameine?				
FOIL	A. Yes, sir. (b) (6) is our action officer fo individual. As we ca	probably the SME, when we rethe 3 and because of that he time in, one of the first things see he understood the authorities.	first got was star we idem	here and figure or ting to figure out tified was the force	out our authorities all the relationship e protection. So	nips. He is a very smart we made him the action			
Falo	A. The specific guid didn't appreciate the	way that either the badges w nd then LNs. We understood	e got her ere disp pretty ea	e: it wasn't writte layed or the badg	n, mostly VOCC ing policies, so, t e CG that there n				
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PREVIOUS EDITIONS ARE OBSOLETE EXHIBIT 1

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of "this is not a dep that to me is the ini deployed, that there that the next piece	he accountability of the loloyed base, but a base lil tial friction point with the was a threat, that they a	ke back in the states, e CG was that the ci are trying to hurt us, s, those Soldiers/gro	" I think you have a lo vilians weren't taking He look hard at the civ	nt about was there was a culture t of contractors and civilians and this very seriously, that we were ilian contractors and then I knew a charge of it. Looking at
		(b)(1)1.4a	1	
A. If there was an i executing.  Q. Are you well ve	rsed in the SOPs and pol-	icles involved in FP related to the LNs	9	nizing (b) (1) (A) because I was on ECP 3 and
		(b)(5)		
Q. Tell me what yo	u can about that.	(b)(1)1.4a		
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USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM. BAF / Afghanistan 12 December 2016 TAKEN AT STATEMENT OF STATEMENT (Continued) (b)(1)1.4a Q. These were exercises or drills prior to the attack that occurred? MFores A. Yes. Mono Q. Did you see any other drills out there? A. Not that I saw. One of the questions that came up was how do we tie in the DOC to these exercises? That is where the operation with multiple things going on, kind of came out o, they included the DOC, included TF MED and included a lot of other pieces on the base. We just never got there. It was delayed for whatever reason; my understanding and what I remember, it was always TF Tiger that came up on the net with some reason not to. Incidents that Tiger had that kind of pushed things to the right is we had to investigate and figure that out. Then RS came down and said no more dismounted patrols. We were trying to figure out what that looked like at that point. And that led into a lot of the FP issues as well as we struggled with, how do we secure our BJDA without dismounted capabilities? Pour Q. Do you recall what the reason was for the delays? A. I know one specific incident had to do with the SIFCAS, it was about three or four days prior to the execution, so I know that delayed it. The other reasons, I do not know. It could be argued that the date was never set in concrete. We never did that for Tiger or for the DOC. Q. Was that exercise something directed by General Thompson or just something you decided you needed to do? Mori A. It's funny how things come down, because it comes down through multiple strings, I had the conversation with (16)(6) and ha saw what they had done with (b)(1)1.4a so we said, we probably need to escalate it to the next level to involve everybody y and that is how I remember it coming out. Q. Can you describe BAF's entry and exit procedures for LNs? fono (b)(1)1.4a

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	STATEMENT OF	(b)(3) 10 USC §130b (b)(6)	TAKEN AT BAF	/ Afghanistan DATED 12 December	2016
	9 STATEMENT	(Continued)			
			(b)(1)1.4a, (b)(3), (b)(6)		
ullForce	A. We looked on the base, be collecting and understood that force. They we not projecting that pretty well probably being OCN and Amedoes is it establiaway, is the doof look at this system to pay we framed the trap the sa	that threat wasn't so much that the threat would be or at things were moving through the could launch a rocket, we wout to where we need to be all. There was a threat on the ground smuggled on; there were erican Contractors and U.S plishes a relationship and that I bring what I need to broas, you know, if this is a profer favors to look away. We problem incorrectly. We me as the ASG, because his	ectly as well. In our PROM stach a kinetic threat, it was more a the outside. We focused too ugh our AO to get to Kabul. A ould mass to that one position a looking. I think the J2 shop to base because we knew there nefarious things coming on an at relationship then turns into ing into the base. So we kind rison, things are still being small ever really considered it and it storically, there has never bee	atement we said we knew there would be of an observation, disruption that the much on what could come in from the sthings were coming in, it was just a rand that is essentially fixing us and understood this and they were kind of were drugs being smuggled on, alcoloud that is not for local nationals. Those trugs being used on the base, and reals the one day I need you to take a knew of understood that was what it was an auggled on and it is used as bartering get after that when 12 November hit, that is because of the history as well, in a kinetic attack on the base from were local nationals and that there wo	ey were e GDA. We a fixing now we are f looking at hol was se are for ly what that e and look and we kind or a financial But I think We fell into ithin, we just
Faco	possibility of	a green on blue. But becaus	se they were separated and do	wn south, there is so much separation thought we could close it down prett	from the
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Case 3:19-cv-01455-B Document 1-3 Filed, 06/19/19/ Rage 198 of 198 PageID 227 TAKEN AT BAF / Afghanistan DATED 12 December 2016 (b) (6) STATEMENT OF 9 STATEMENT (Continued) (b)(1)1.4a (b)(1)1 4a **AFFIDAVIT** (b)(6). HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1. AND ENDS ON PAGE 8 I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUE! - INDUCEMENT

(b) (6) e of Person Making Statement! Subscribed and sworn to before me, a person authorized by law to administer caths, this 12th day of (b)(3) 10 USC §130h(b)(fi) my capacity as a United States Army December at Bagram Air Field. Afghanj confied Court Reporter, that this is an accurate representation of interview between these 2 parties. (Signature of Person Administering Oath) MG THOMAS S. JAMES JR. (b) (6) (Typed Name of Person Administering Oath) Article 136(B)(4), U.C.M.J (Authority To Administer Oaths)

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